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ABSTRACT

The instructional units are designed for use by preservice regular education teachers to cover educating handicapped students in the least restrictive envirionment. The first series of units deal with teacher's communication skills. Objectives and enabling activities are listed as well for awareness and attitudinal factors. The bulk of the document is composed of 10 units covering legal, philosophical, and social issues involved in educating the handicapped. The ten units presented are: litigative and legislative trends in educating handicapped students; legal protections for handicapped students; teacher responsibility and the law; historical issues in educating handicapped children; ethical and social implications of labels and terms; values, priorities, and policies regarding the handicapped; ethical and social consequences of testing, grouping, and special treatment; social determinants of attitudes toward exceptionality; influence of social and environmental interactions on self concept of handicapped students; and public attitudes, political climate, and school policy. (CL)

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Educating Students in Least Restrictive Environments:
Instructional Preparation for Teachers

Series IV: Communication Skills
Series V: Legal, Philosophical and Social Issues: Implications for Handicapped Students

School of Education
The University of Kansas

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EC 132 831

EDUCATING STUDENTS IN LEAST RESTRICTIVE ENVIRONMENTS
Instructional Preparation for Teachers

produced by the
Dean's Grant Project
School of Education
The University of Kansas

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Issued Fall 1980

FOREWORD

The instructional units included in this series were designed for use by preservice regular education teachers in the University of Kansas' School of Education. Faculty members and graduate assistants in the School of Education participated in the development of the units designed for integration within the regular teacher education curriculum at the University of Kansas. Moreover, the units were developed in part by individuals who would teach the content. Thus, while the units are appropriate and complete for use by our own faculty, other readers may choose to add or delete material to meet their own objectives. The unit format was adopted primarily to maximize instructor flexibility while incorporating this content into existing preservice curriculum.

ASSUMPTIONS OF THE CURRICULUM

In accord with the philosophical background of the Dean's Grant Project at the University of Kansas, these units are taught as integrated portions of regular education content. The advantages of this approach include the following:

1. This manner of presentation is in consonance with the underlying philosophy of Least Restrictive Environment. While units could be included in separate, special education courses, the University of Kansas' units were developed with the intent of enhancing regular and special education methodology in preparing teachers to serve children in the Least Restrictive Environment.
2. Integration of Least Restrictive Environment content into regular education courses will enhance teacher trainee appreciation of teaching mildly handicapped students in regular classrooms as an integral part of the teaching responsibility.
3. Integration of the units into regular education classes will facilitate teacher trainee ability to apply techniques to regular education content that were previously associated with special education.
4. Integration of Least Restrictive Environment content into regular education courses will enhance the potential of addressing the unique needs, learning styles, and interests of all teacher trainees.

OVERVIEW OF THE DEVELOPMENT PROCESS

The units included in series 1-5 of *Educating Students in Least Restrictive Environments* are the culmination of the efforts and commitment of a large proportion of the School of Education faculty at the University of Kansas during the 1975-1980 Dean's Grant Project.

The conception of *Educating Students in Least Restrictive Environments* as a curriculum development project at the University of Kansas' School of Education occurred during 1975 when faculty generated and reached consensus on a list of competencies which would serve as a basis for the new Least Restrictive Environment content.

Through Summer, 1976, faculty volunteers wrote an original set of units addressing each competency. This first attempt at developing the new curriculum resulted in a series of units which varied greatly in length, format, demands on the instructor, and class hour demands for instruction. Thus, on the basis of formative evaluation of the units, format and content revisions were made in order to produce a more consistent curriculum which could, in fact, be taught within the course/time parameters of the overall School of Education curriculum. This revision process included changing content of units, deletion of some units and development of new units, as necessary, to ensure a consistent and coherent curriculum.

The next step in developing the *Educating Students in Least Restrictive Environments* curriculum was summative evaluation of the curriculum in the form of field testing units in regular education courses. During Fall, 1977 and Spring, 1978 this summative evaluation was conducted, and units were further revised on the basis of recommendations from regular education faculty who taught the new material and students who received the instruction. The resulting series constitutes the *Educating Students in Least Restrictive Environments* curriculum.

The final unit within the series was originally written in 1977 and was continuously revised to include updated information on implementing P.L. 94-142. The final writing of this series was completed in Spring 1980 by faculty and graduate assistants versed in the current trends of the Least Restrictive Environment philosophy.

We sincerely hope that the *Educating Students in Least Restrictive Environments* curriculum will be a useful instructional tool for both faculty and students of the School of Education, University of Kansas. It is available to other institutions of higher education and inservice teachers who may wish to adapt our curriculum for training regular educators to teach handicapped students in the Least Restrictive Environment.

Dale P. Scannell, Dean
School of Education

Faith Scofield, Project Coordinator
1978-1980

Acknowledgements

The *Educating Students in Least Restrictive Environments* curriculum represents the efforts of the University of Kansas School of Education faculty and graduate assistants who were involved in considering competencies, writing original units, reviewing the original units, and revising or developing new units. While authorship of units included in this curriculum reflects only those faculty and graduate students who contributed to the final writing of units, the task of these authors would have been overwhelming without the original contributions of faculty. Contributing authors include:

Sherry Borgers	Counseling
Stephen P. Foster	Education
Barbara J. Kerr	Special Education
James Hillesheim	Administration, Foundations and Higher Education
James O'Dell, Sr.	Administration, Foundations and Higher Education
Faith Scofield	Education

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Series Overview

Series IV: Communication Skills
Faith Scofield

The units in Series IV "Communication Skills," are intended to supply basic information regarding attitudes toward handicapped students and awareness regarding communication skills with children. This series of units is one section of a complete curriculum, *Educating Students in Least Restrictive Environments* developed for the Dean's Grant Project, School of Education, University of Kansas. (A complete listing of units included in the five instructional packages composing this series can be found on the following page.)

Recommended Placement of Units for Instruction

The units in this series could be presented in a wide variation of courses. Each institution should determine the appropriate placement reflective of their curriculum requirements.

Overview of Units

This series discusses the attitudes and effects of attitudes toward handicapped students. The awareness of communication styles and their effect is also included.

Instructional Considerations

Specific recommendations to the instructor accompany each unit description. The instructor should review these recommendations as well as the unit content in order to plan for instructional time and individual/group activities. Discussion and activities are recommended; however, the instructor may want to add others or alter the ones provided to insure continuity and relevance to the course in which the unit is to be delivered. The instructor should have knowledge in counseling, human relations, and experience as a group facilitator.

Educating Students in Least Restrictive Environments, SERIES TITLES

Series I Characteristics and Assessment

1. Characteristics of Normal and Exceptional Learners
2. Classroom Assessment Principles and Procedures
3. Theories of Learning
4. Writing Behavioral Objectives

Series II Planning for Instruction

1. Approaches for Delivering Special Education Services
2. Referral Systems
3. Development and Use of the IEP
4. Analyzing Instructional Tasks
5. Selecting Instructional Activities for a Students Strengths and Weaknesses
6. Individualizing Instructional Materials and Media
7. Organizing and Planning for Individual and Group Instruction
8. Planning Classroom Schedules for Individual Instruction
9. Planning Classroom Layouts for Exceptional Learners

Series III Instructional Management

1. Instructional Planning for Learner Participation
2. Verbal and Nonverbal Communication
3. Questioning Techniques for the Classroom
4. Planning Frequent Success Experiences for the Learner
5. Motivational Techniques
6. Managing Your Classroom
7. Formative Evaluation in the Classroom
8. Maintaining Records of Student Progress
9. Reporting Student Progress to Parents
10. Reporting Student Progress to Ancillary Personnel

Series IV Communication Skills

1. Communication Skills
2. Attitudes Toward Exceptionality

Series V Legal, Philosophical, and Social Issues: Implications for Handicapped Students

1. Litigative and Legislative Trends in Educating Handicapped Students
2. Legal Protections for Handicapped Students in the Schools
3. Teacher Responsibility and the Law
4. Historical Issues in Educating Handicapped Students
5. Social and Ethical Implications of Terms and Labels
6. Values, Priorities, and Policies Regarding Handicapped Students
7. Ethical and Social Consequences of Testing, Grouping, and Special Treatment
8. Social Determinants of Attitudes toward Exceptionality
9. Influence of Social and Environmental Interactions on Self Concept of Handicapped Students
10. Public Attitudes, Political Climate, School Policy: Impact on Treatment of Exceptional Learners

COMMUNICATION SKILLS

by
Sherry Borgers
The University of Kansas

A teacher is a person. There is a need for all persons to understand human behavior, both their own and that of others. This competency focuses on the individual and her/his relation to self and to others. The activities in which the teacher trainee is asked to participate are designed to increase understanding of communication and of human behavior.

Teacher Trainee Outcomes

This unit is designed to provide experiences in communication so that learners may participate in activities which provide practice in and increase awareness of communication styles and their effects.

Instructor Information

Prerequisites:

None

Organization:

This unit is organized in two parts each of which has a single teacher trainee objective plus a set of activities. These activities include working in triads, independent activities, group discussion, and role playing.

Content Overview:

Part I focuses on listening and responding. Part II focuses on one- and two-way verbal communication and nonverbal communication. However, the important point to remember when doing these activities is that the content of the activity is not nearly so important as the processing of the activity. Therefore, it is important that the instructor have some counseling and human relations skills.

Suggestions for Teaching:

The instructor for these units should be someone who has knowledge and skills in the area of counseling and human relations. Teacher trainees are asked to interact with one another; therefore, it is necessary that the instructor have skill as a group facilitator and training to see that activities are adequately and appropriately processed by the participants. At all times it is necessary that the instructor consider the teacher trainees with whom s/he is working and modify activities so that they are appropriate for the individuals with whom s/he is working.

This unit should be scheduled during the first semester of the teacher education program. It is recommended that instructors work with teacher trainees in small groups of not more than 12 persons. The amount of time required may vary, but this unit will require approximately four hours. It is suggested that it be done in two blocks of two hours each.

No materials other than the units are needed. However, it would be helpful to have a reading list of current books and articles available for teacher trainees who wish to do additional reading. The best physical facility would be a small, comfortable room where the participants could move tables or desks and work as a group.

NOTE OF CAUTION: The instructor should at all times be aware of the teacher trainees' reactions, questions, and concerns and be prepared to respond to the teacher trainees rather than the content of the unit.

Suggestions for Evaluation:

There is no pre- or post-test; however, the instructor will give feedback throughout the activities.

COMMUNICATION SKILLS

by
Sherry Borgers
The University of Kansas

Prospectus

A basic interpersonal skill is the skill of effective communication. This is a critical aspect of a teacher's professional skills. Therefore, it is important that teachers and prospective teachers examine their communication styles and be aware of both the intended and unintended effects of their communication.

These activities provide an opportunity for you to learn more about your communication style. There are no right or wrong answers so please invest yourself into the activity so that you can gain the maximum benefit. If you have questions, if you have concerns, or if an activity seems difficult for you, please contact the instructor.

Part I

Objective:

1. The teacher trainee can explain techniques useful in communicating with pupils, peers, parents and support personnel.

Enabling Activities:

1. A basic interpersonal skill is the skill of effective communication. Crucial to effective communication are listening and responding. These first activities will focus on listening.

   1A. *Do you listen?* Form a triad. Decide who is A, B, and C and participate in the following activities. A, begin expressing your feelings about a controversial issue. B, imagine a scene taking place beyond A; look right through A and concentrate on the scene beyond. C, listen to A; however, while listening start thinking about how you would like to answer A. After three minutes, each of you share your feelings about this experience. You may wish to consider these questions:
   a. Is this what frequently happens in conversation?
   b. What meaning does this have for a classroom and for you as a teacher?

   1B. *Listening and The Unrelated Response:* In the triad, A and B choose a topic and begin a three minute discussion. C, you are to discuss the same topic, but what you say must not be related to what A and B say. Pretend that you do not hear them. If they ask a question, respond in an unrelated manner. After the three minutes, discuss. You may wish to consider these questions:

Objective: (cont.)

Enabling Activities: (cont.)

a. How did it feel to have someone who ignored what was being said?
b. How did it feel to ignore something said by another?
c. How does this type of response affect a conversation?
d. How does this happen in the school?

1C. *Incomplete Listening* Remaining in the triad, A and C choose a topic and begin a three minute discussion. B, listen to what is being said but only to use it as a way to introduce your thoughts into the conversation. Use a small part of what is said in order to change the discussion to something which is interesting to you. When finished discuss how each of you felt. You may wish to consider these questions:

a. Do people really listen?
b. Why is listening considered the most important part of communication?
c. How does this type of listening operate in the classroom?

1D. *Listening to Another* All of you in the triad agree on a topic that you wish to discuss for the next five minutes. There is only one rule for this discussion—you can only give your thoughts after you have restated what the person before you said. You must listen to the preceding person and restate her/his thoughts or feelings before you speak. After five minutes, discuss. You may wish to consider these questions:

a. Was this difficult? If so, why?
b. What was your reaction to restating another's thoughts and feelings?
c. Did you have difficulty thinking about your response and listening at the same time?
d. Do you really listen to others?

2. The second part of these activities will focus on responding.

2A. For this activity you will first work individually. Use the answer sheet in Appendix A and complete the two parts of this answer sheet.

2B. After you have completed the answer sheet form a triad and discuss your responses with other people. Tell these persons which responses you might like to change after thinking about them. Also discuss these questions: What do your responses say about you as a person? Are you capable of making more

Objective: (cont.)

Enabling Activities (cont.)

than one type of response? Why does a teacher need to be able to respond in many different ways?

3. The third part of these activities will focus on how you may respond differently when communicating with different people.

3A. Form a triad and discuss why you might communicate differently with pupils and peers or with parents and peers. Is it appropriate to communicate in different ways? In communication, why is it helpful to consider the person to whom you are speaking?

3B. Participate in a discussion with the entire group. The purpose of this discussion is to summarize what you have learned about communication from these three activities.

Part II

Objective:

2. The teacher trainee demonstrates the ability to communicate both affectively and informatively with pupils, peers, parents, and support personnel.

Enabling Activities:

1. Teachers communicate with the teacher trainees in various ways. Therefore, it is important for you as a teacher to understand the different effects communication can have on people. One form of communication is known as one-way. This form occurs when you tell your students something without additional interaction. Examples of this kind of communication are a lecture, written instructions for a test, and memos. A second form of communication is two-way which allows you to send the message and also allows the teacher trainee to ask questions which may help to clarify the message. Examples of this form of communication are group discussions and question and answer sessions. Another means of two-way communication is a discussion in which verbal behavior passes back and forth between two individuals and their comments are tied together by a common subject theme. Although both types of communication are valuable, it is important to determine whether one- or two-way communication is more appropriate for an interaction. This activity will ask you to participate in both kinds of communication and to be aware of your reactions.

1A. One-way communication.
a. The group is to select one person to be the sender while the remainder of the group are

Objective: (cont.)

Enabling Activities (cont.)

receivers.
b. The instructor will ask the sender to choose a task or a design and to instruct the group members in such a way that they can complete the task or reproduce the design. Gestures may not be used.
c. Each group member is to follow the sender's instructions without asking questions or communicating in any way with the sender or with other group members.
d. Both sender and receivers are to remember their reactions.

1B. Two-way communication
a. The instructor will ask someone to do the same as above except this time the members may ask questions and the sender may respond.
b. After the task or design is completed, reactions and feelings about the two tasks should by discussed. The following questions should be considered: Which was more comfortable? Which was more effective? Which required more time? Which does a teacher use most often when communicating with others?

2A. The second activity asks that participants consider the messages they send to others, both verbally and nonverbally.
a. List some ways you communicate with others, both verbally and nonverbally.
b. List ways that these communications might affect another person, either positively or negatively.
c. Participate in the discussion which will focus on communicative behavior and its effects on others.
d. Role-play and discuss the following situations:
1. You are writing on the board in the front of the room. You hear giggling and turn to see that John, a child with problems, has fallen asleep at his desk. John wakes up. What do you say to him? What is your nonverbal communication?
2. Mary has not turned in any homework this week. She has some learning problems. You have talked with her two times previously and she has promised to make an effort to do homework. What do you say to her? What do you say to her parents when they come for a conference?
3. Tim is being placed in your class for social studies. You are aware that he has not previously been in a regular classroom. What kinds of questions do you ask the special education personnel?

Objective: (cont.)	Enabling Activities (cont.)
	e. Conclude this activity by participating in a discussion that focuses on what you have learned about your own personal style of communicating with others. When you consider your personal style, remember to think about both the cognitive (thinking) and the affective (feeling) components. A teacher needs to be in touch with both of these components since feelings are not left outside a room when learning is taking place.

Appendix A. Answer Sheet

I. Read the statements and write a brief response to each.

1. Female student. "I can't stand school. I hate it. There is no reason to hate it, but I do. I cry every morning when I have to come."
Response: _____

_____

_____

_____

2. Male student. "I've been in this school for almost a year, and no one will play with me. I have no friends. Nobody likes me."
Response: _____

_____

_____

_____

3. Male student (with physical handicap): "I can't do the things that others do. I can't play football or any sports. I wish I were like my brothers. They have everything and I have nothing."
Response: _____

_____

_____

_____

4. Parent: "How can you tell me there is something wrong with my daughter? If she is having trouble, it is your fault for not teaching her. What's wrong with this school?"
Response: _____

_____

_____

_____

II. Look carefully at your statements. When a statement is made, you can respond in many ways. For example, you can be supportive or nonsupportive; you can be judgmental or nonevaluative; you can listen and accept what has been said or you can request more information. The way you respond is neither good nor bad in itself. The best guideline is to make the response appropriate to the situation.

If you are going to make appropriate responses, you need to be aware of the way in which you respond. Look at the responses you have made and think about the way you often respond to people. Write a few sentences that you think describe your manner of responding.

_____

_____

_____

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_____

_____

_____

_____

ATTITUDES TOWARD EXCEPTIONALITY: IMPLICATIONS FOR TEACHING AND LEARNING

by
Sherry Borgers
The University of Kansas

Teachers do more than teach subject matter, they teach people. Therefore, there is a need for teachers to understand human behavior. If a person desires to increase knowledge of others, s/he must first come to understand her/himself. The beginning point of self-understanding is self-awareness.

Teacher Trainee Outcomes

Upon completion of this unit the teacher trainee will have participated in activities designed to help her/him become more aware of attitudes and the effects of these attitudes. The teacher trainee should be able to explain verbally or in writing how attitudes may affect teaching and learning. Also the teacher trainees should be able to make "I" statements concerning their attitudes and to observe others and give feedback concerning attitudes and behaviors.

Instructor Information

Prerequisites:

None

Organization:

This unit is organized in three parts consisting of three teacher trainee objectives. The activities include working individually, working in a dyad, working as a small group, and role playing.

Content Overview:

Part I focuses on the effects of attitudes on teacher and learner behavior. Part II emphasizes the importance of becoming aware of one's own attitudes and being responsible for these attitudes. Part III provides an opportunity for the student to demonstrate a supportive attitude towards exceptional learners.

However, it is imperative that the instructor remember that when doing these activities the content of the activity is never so important as the processing of the activity. It is necessary that the instructor have some counseling and human relation skills so s/he can help teacher trainees get the most from the activity.

Suggestions for Teaching:

The instructor for these units should be someone who has knowledge and skills in the area of counseling and human relations. Teacher trainees are asked to participate in activities designed to increase self-awareness and awareness of others. Therefore, it is necessary that the instructor have human relations skills and that the instructor see that activities are adequately and appropriately processed by the participants. At

all times it is necessary that the instructor consider the teacher trainees with whom s/he is working and modify activities so that they are appropriate for the individuals with whom s/he is working.

It is recommended that this unit be scheduled during the first semester of the teacher education program and that the instructor work with teacher trainees in small groups of not more than twelve persons. The amount of time required may vary, but this unit will require approximately six hours. Ideally it would be completed in three two-hour blocks of time.

No materials other than the units are needed. However, it would be helpful to have a reading list of current books and articles available for teacher trainees who wish to do additional reading.

The recommended physical facility is a small, comfortable room with movable furniture so that the participants can work as a group and can role play.

NOTE OF CAUTION: The instructor should at all times be aware of teacher trainees' reactions, questions, and concerns and be prepared to respond to the teacher trainees and their concerns rather than to the content of the unit.

Suggestions for Evaluation:

There is no pre- or post-assessment. Throughout the activities the participants will receive feedback from the instructor and from one another.

ATTITUDES TOWARD EXCEPTIONALITY: IMPLICATIONS FOR TEACHING AND LEARNING

By
Sherry Borgers
The University of Kansas

Prospectus

These activities provide an opportunity for you to increase your self-awareness. They may be used or misused, depending on you. There is no right or correct response to any of the activities. Focus on your experience. Do not attempt to decide if it is correct or attempt to explain it.

If you do not invest yourself, you will get little from the activities. They may be superficial or they may have depth, this depends on you. These activities may be just another task, or they may have meaning. Remember what you get from these activities depends on how much you put into them.

If you have questions, if you have concerns, or if a particular task seems to be difficult for you, please contact the instructor. Remember to complete the unit as honestly as possible so that you can gain the maximum benefit from the suggested activities.

Objectives

1. The teacher trainee will explain effects of attitudes on teacher behavior, learner behavior, and instructional outcomes.

Enabling Activities

1. It is widely accepted and can be supported by research that attitudes do affect behavior. Therefore, it is imperative that teachers be aware of their attitudes and the effects these attitudes may have on their behavior and the behavior of others. If a person has self-knowledge, s/he can better predict her/his behavior and the impact it may have on the environment. With this kind of knowledge, a person is in a much better position to act in ways beneficial to her/himself and to others. Therefore, this first activity focuses on awareness of attitudes and awareness of possible effects of these attitudes.

   1A. *Personal Inventory* Respond to each of the following items in writing. Think and focus on yourself before you answer.
   a. What have been my most positive experiences?
   b. What things do I perform well?
   c. What are my primary personal strengths?
   d. What have been my key failure experiences?
   e. What are my primary personal weaknesses?
   f. If I had a magic wand and could make two changes in myself at this instant, what changes would I make?
   g. What meaning do the above answers have for me as a teacher?

Objectives (cont.)	Enabling Activities (cont.)
	1B. *Group Discussion* You have just completed the Personal Inventory. Considering the answers you gave, what do you see as possible effects of some of these behaviors? For example, choose one of the things you do well and discuss how this might affect you and others. 1C. *Who Am I?* Take ten separate sheets of paper. On each sheet answer the question "Who Am I?" These answers may be roles, responsibilities, qualities, attitudes, values, beliefs, feelings, etc. Do this as quickly as possible. After you have completed the ten, arrange the sheets in their order of importance with number 1 the most important and number 10 the least important. 1D. *Group Discussion* After having given some thought to yourself, discuss how you might affect the behavior of students and the classroom environment. For example, you may have described yourself as being a very responsible person. What effects might this have on others? Consider both positive and negative effects.
2. The teacher trainee will demonstrate techniques of determining one's personal attitudes.	1. Behavior is more than a function of what happens to us from external sources. It is also a function of what we believe and how we feel about ourselves on the inside. We need to know ourselves. It is important to be able to determine one's own attitudes instead of relying on others. In this part of the unit you will be asked to participate in two activities, problem solving and role playing. Both of these can be useful in helping you to learn more about your attitudes. 1A. *Effective Problem Solving* In life there are times when problems arise. Whenever this happens, it becomes important for you as a person to be able to resolve these problems and to understand your involvement in the problem. Turn to Appendix A and read the detailed description of the four stages of problem solving. Using the answer sheet which is provided, identify a problem that you have and proceed through the four stages of effective problem solving. Once you have completed the answer sheet find a partner and discuss how this procedure may be helpful in increasing your awareness of your attitudes and behaviors.

Objectives (cont.)	Enabling Activities (cont.)
	1B. *Three situations* One person should role play the teacher. Other group members will be asked to play other roles. Group members not involved in the role playing should observe, give feedback, and participate in the discussion. After approximately five minutes of role playing, the instructor will stop the activity and ask for feedback and discussion. During this discussion the instructor will ask you to consider what attitudes you think the participants demonstrated during the role playing. a. Situation 1. You have asked a handicapped student to stop fighting in the hall. He did not stop so you told him to come to your room. When he comes, you ask why he did not obey your request. At first he refuses to answer but then he tells you that he does not like you because you are prejudiced against people with handicaps. b. Situation 2. You are a kind, concerned teacher. Your EMR students ignore you when you ask them to be quiet or either they stop talking for only a short time. When you work with them they do not pay attention, they get up and walk around and talk to one another. Although you like teaching, discipline is getting to be a real problem and you are frightened that you cannot handle the situation. You have decided to discuss this matter with these students. c. Situation 3. You know that a teacher's behavior may affect the self-concept of students. In your class you have Ed who never does a good job on his work and rarely completes an assignment. In short, he is rarely successful and his parents expect a great deal from him. He has given up and has an "I don't care" attitude. You have a conference with Ed and his parents.
3. The teacher trainee will demonstrate a supportive attitude towards exceptional learners.	1. This is best evaluated during field experience. However, an option is given if field experience is not possible. 1A. The teacher trainee will demonstrate a supportive attitude toward exceptional learners when s/he is working with them in a school setting. This will be evaluated by the person from the university who is supervising. 1B. If this cannot be demonstrated in the field, the following activity is suggested. a. List those rules which you think you will have in your classroom that may affect special students.

Objectives (cont.)

Enabling Activities (cont.)

b. List the purpose of each rule.
c. List at least two possible effects of each rule. This is important because any system of rules will have effects other than those for which the system is intended. When establishing a set of rules it is necessary to consider: Why do I want this rule? What purpose will it serve? What side effects will it have? Am I comfortable with the effects of this rule?
d. Reconsider your list of rules and determine which ones are most likely to achieve the stated purpose and which ones need to be changed because of side effects or because they are not supportive.
e. Discuss with the group what you have learned from this activity.
f. Participate in the summary discussion led by the instructor. The focus of this discussion will be to summarize how your attitudes will influence teaching and learning.

Appendix A

I. Stages of Effective Problem Solving

You are asked to select a problem that may be causing you some difficulty. After you have identified a problem, you are to consider the following questions:

1. Is the problem important to you?
2. Are you personally involved in the problem?
3. What are your feelings and reactions to the problem?
4. How do you contribute to the problem?

II. Example of the Stages of Effective Problem Solving

The following example is given so that you can better understand the four stages of effective problem solving.

1. *Verbally state your problem.*
   If you think about your problem as something that is wrong in general and is not related to you personally, then you are thinking in stage one. However, if you think how you are involved in the problem, then you are thinking in stage two.
   Examples of stage one and stage two:

   Stage One
   The student is disobedient too often.

   Stage Two
   The student disobeys me too often.

   In stage one the student is disobedient whereas in stage two the student disobeys you. If your problem is stated in stage one, you have not described the problem involving yourself. You can progress to stage two by restating the problem in terms of how you are involved. You can do this by determining how this is a problem to you.

2. *Restate your problem and determine how you are involved in the problem.*
   Now think again about your problem as you have restated it. If you have indicated how your problem is a concern to you but have now indicated how you feel and react to the situation, you are thinking in stage two. If you restated your problem indicating your feelings and reactions, then you are thinking in stage three.
   Examples of stage two and stage three:

   Stage Two
   The student disobeys me too often.

   Stage Three
   The student disobeys me too often, and this usually rattles me so I cannot concentrate on what I am doing or attend to the other students. I also become annoyed at him for not obeying me.

   In stage two you have indicated your involvement with your problem whereas in stage three you have indicated your involvement plus how you feel and react. Again think about how you have stated your problem. If you have not indicated how you feel and react, then you need to restate your problem emphasizing your feelings and actions.

3. *Restate your problem and emphasize your feelings and reactions.*
Think again about your problem as you have restated it emphasizing your feelings and reactions. If you have indicated your problem as it concerns you and have included your feelings and reactions but have not recognized the ways in which your behavior adds to the problem, you are thinking in stage three and not in stage four. However, if your statement includes recognition of how you help to create or continue your problem, then you are thinking in stage four.
Examples of stage three and stage four:

Stage Three
The student disobeys me too often, and this rattles me so I cannot concentrate on what I am doing or attend to the other students. I also become annoyed at him for not obeying me.

Stage Four
The student disobeys me too often, and this usually rattles me so I cannot concentrate on what I am doing or attend to the other students. I also become annoyed at him for not obeying me. My feelings about his disobedience keep me on edge so that I am more likely to ignore him. Also, he probably does not know the effect his disobedience has on me because I have never directly talked to him about the problem.

Thinking about how you have now restated your problem, ask yourself whether you have fully explored your contribution to your problem in identifying the things you do or neglect to do.

4. *Restate your problem and indicate ways in which you contribute to the situation.*
When you have gone through stages one to four in thinking about your problem, you may find that you have a more advantageous and comprehensible perception of your problem. You may also find that some of your feelings about the problem have changed or are beginning to change.

III. Participation in Effective Problem Solving.

Identify a problem that you have and proceed through the four stages of effective problem solving.

I. State the Problem._____

_____

_____

_____

II. Restate the Problem and include your involvement._____

_____

_____

_____

_____

III. Restate the Problem and emphasize your feelings and reactions._____

_____

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_____

IV. Restate the Problem and indicate ways in which you contribute to the problem._____

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_____

SUMMARY: Using what you have gained from the four stages of problem solving, again state the problem and note whether or not you are stating it differently.

Series Overview

Series V—Legal, Philosophical and Social Issues: Implications for Handicapped Students

Faith Scofield

The units in Series V were designed to provide information on the legal, philosophical, and social issues of handicapping conditions. This series of units is one section of a complete curriculum, *Educating Students in Least Restrictive Environments*, developed for the Dean's Grant Project, School of Education, University of Kansas. (A complete listing of units included in the five instructional packages composing this series can be found on the page following.)

Recommended Placement of Units for Instruction

The units in this series would be most appropriately placed in undergraduate historical or foundation courses.

Overview of Units

This series discusses the legal implications of educating handicapped children including the teacher's responsibilities. The influence of historical, social, ethical, attitudinal, environmental, and political factors are examined in regard to educating handicapped children. Priorities for service and policies are also presented. These units assume previous introductory information regarding P.L. 94-142.

Instructional Considerations

Specific recommendations to the instructor accompany each unit description. The instructor should review these recommendations as well as the unit content carefully in order to plan for instructional time, independent work required of teacher trainees, and discussion or group activities. The instructor should also review required and recommended readings and place on reserve copies of recommended readings which are not included in this unit. Although examples, discussion, and activities are recommended, the instructor may want to add others or alter the ones provided in order to insure continuity and relevance to the course in which the unit is to be delivered.

The readings presently included or recommended were judged to be most appropriate for use by preservice teachers at the University of Kansas. The criteria for selection of each reading assignment included consideration of course content into which units would be integrated, the desired depth of readings considered appropriate for undergraduate students, and the instructor's preference. Readings may need to be modified when the unit is used in different courses, with different students or by different instructors.

Educating Students in Least Restrictive Environments, SERIES TITLES

Series I Characteristics and Assessment

1. Characteristics of Normal and Exceptional Learners
2. Classroom Assessment Principles and Procedures
3. Theories of Learning
4. Writing Behavioral Objectives

Series II Planning for Instruction

1. Approaches for Delivering Special Education Services
2. Referral Systems
3. Development and Use of the IEP
4. Analyzing Instructional Tasks
5. Selecting Instructional Activities for a Students Strengths and Weaknesses
6. Individualizing Instructional Materials and Media
7. Organizing and Planning for Individual and Group Instruction
8. Planning Classroom Schedules for Individual Instruction
9. Planning Classroom Layouts for Exceptional Learners

Series III Instructional Management

1. Instructional Planning for Learner Participation
2. Verbal and Nonverbal Communication
3. Questioning Techniques for the Classroom
4. Planning Frequent Success Experiences for the Learner
5. Motivational Techniques
6. Managing Your Classroom
7. Formative Evaluation in the Classroom
8. Maintaining Records of Student Progress
9. Reporting Student Progress to Parents
10. Reporting Student Progress to Ancillary Personnel

Series IV Communication Skills

1. Communication Skills
2. Attitudes Toward Exceptionality

Series V Legal, Philosophical, and Social Issues: Implications for Handicapped Students

1. Litigative and Legislative Trends in Educating Handicapped Students
2. Legal Protections for Handicapped Students in the Schools
3. Teacher Responsibility and the Law
4. Historical Issues in Educating Handicapped Students
5. Social and Ethical Implications of Terms and Labels
6. Values, Priorities, and Policies Regarding Handicapped Students
7. Ethical and Social Consequences of Testing, Grouping, and Special Treatment
8. Social Determinants of Attitudes toward Exceptionality
9. Influence of Social and Environmental Interactions on Self Concept of Handicapped Students
10. Public Attitudes, Political Climate, School Policy: Impact on Treatment of Exceptional Learners

LITIGATIVE AND LEGISLATIVE TRENDS IN EDUCATING HANDICAPPED STUDENTS

by
Barbara J. Kerr
The University of Kansas

The sovereignty of the schools no longer exists. In this day and age, we find more and more decisions by the court being returned against the schools and their representatives. Therefore, it is most advisable for anyone considering a career in education as well as for those already employed to be aware of litigative rulings and legislative mandates under which they could be found liable. This is especially true in the area of education for the handicapped where, within the last five years, major litigation and legislation have caused widespread effect on our schools and their employees.

Misunderstanding of the laws has caused concern, fear, and even inhibited behavior in dealing with the handicapped student. It is the intent of this unit to present litigation and legislation so as to make the teacher trainee more informed. Presentation is made regarding those cases that have the most widespread effect upon the schools in educating the handicapped.

Teacher Trainee Outcomes

Increased effectiveness of the school staff member regarding the areas of accountability within his role as a public servant will result from the completion of this unit.

Instructor Information

Prerequisites:

No specific knowledge is necessary for the teacher trainee prior to beginning this unit. Information required is obtained in this source book.

Organization:

Major legislative mandates, landmark cases, and legal definitions coupled with an article by Kirp comprise the reading content for this unit. Teacher trainees are requested to make a written review of the Kirp article. Class time is to be spent in discussion of the reading material.

Content Overview:

This material has been selected to cover pertinent cases and mandates which affect all school employees. State and national plans are included for the operation of programs for the handicapped.

Suggestions for Teaching:

At least five one-hour class sessions will be needed for completion of this unit. The instructor will find a combination lecture/discussion approach most suitable in providing information for this unit. Discussions are to involve assigned reading.

The use of a staff member from the State Department of Education as a guest lecturer for one of the class sessions is recommended as a most useful and stimulating approach to teacher trainee learning.

Suggestions for Evaluation:

Performance on short answer examinations, multiple choice, and true/false statements can be used to evaluate the teacher trainee's understanding of the materials. Also the instructor's evaluation of the outline as prepared by the students can serve as a measure of the knowledge gained.

LITIGATIVE AND LEGISLATIVE TRENDS IN EDUCATING HANDICAPPED STUDENTS

by
Barbara J. Kerr

Prospectus

How can I be sure I am acting within the appropriate limits? Is the handicapped student in my classroom being fully served? What can I do to become more aware of the legal implications of being a teacher? These are troubling questions and valid in light of present trends of the courts.

The above questions deal with legal matters for which this unit presents some answers. Through establishment of objectives and their accompanying enabling activities, important information can be gained which will resolve the dilemma presented by these types of pertinent questions.

Objectives	Enabling Activities
1. The teacher trainee can define relevant legal terms used in cases regarding handicapped students.	1. Read and study handout of definitions of legal terms. 2. Class discussion of handout.
2. The teacher trainee will read and prepare a detailed outline of the article, "The Special Child Goes To Court."	1. Reading 1: Kirp. 2. Outline the article. 3. Discuss article in class. 4. Hand in assigned outline.
3. The teacher trainee will be able to discuss the landmark cases and legislative acts which have set precedents in the trends for educating handicapped students.	1. Reading 2: Gilhool. 2. Reading 3: Abeson. 3. Discuss in class the influence of cases and acts.

Readings

Abeson, Alan. "Recent Developments in the Courts," in *The Right to An Education Mandate*, Vol. III of *Leadership Series in Special Education*, R. A. Johnson, J. C. Gross, R. F. Weatherman, editors. Minneapolis: University of Minnesota, 1974, pp. 69-80.

Gilhool, Thomas K. "The Right of Access to Free Public Schooling For All Children," in *Decategorization and Performance Based Systems*, and *Special Education in Court*, Vol. I and II of *Leadership Series in Special Education*, J. R. Johnson, J. C. Gross, R. F. Weatherman, editors. Minneapolis: University of Minnesota, 1973, pp. 167-177.

Kirp, D. "The Special Child Goes to Court." *Trends in Education*. Columbus, Ohio: University Council for Educational Administration, Ohio State University, School of Education, Vol. No. 2 (pp. 1-12).

RECENT DEVELOPMENTS IN THE COURTS

Alan Abeson
Director, State and Federal Clearinghouse
The Council for Exceptional Children

While there are many ways to begin examining the legal reform movement, I would like to begin this paper by looking at the present status of what has been called the litigation "business." In early November of last year when we did our last count of the number of right to education lawsuits that have been filed or completed we found forty-two suits in twenty-six states. I also know of four additional states in which serious consideration and preliminary work is occurring regarding the bringing of suit. Thus, we are now talking about a phenomena that has already directly affected over half the country.

Since January of this year when the Council for Exceptional Children prepared another yellow-covered book (those of you familiar with our clearinghouse projects recognize that everything we do is in yellow, and there is no special meaning to that), *A Continuing Summary of Pending and Completed Litigation Regarding the Education of Handicapped Children,* which is a compendium of all the litigation, ten new cases had been filed. This gives you some idea of the speed with which all of this is happening.

A second way of looking at the movement is to consider how it has changed since it began. The title of this article contains the word "recent" and although the entire right to education litigative effort is recent, perhaps no older than two and one-half to three years, it has and is changing substantially.

First the suits today are more sophisticated both conceptually and legally. This has occurred in part because with experience comes sophistication, but also because more sophisticated defenses are being encountered in the states. We have even heard that the attorneys general of some of the states under suit have been talking to each other. Additionally the Supreme Court decision in the Rodriguez school finance case which I will briefly discuss has had some impact that has forced more sophistication.

A second difference is that at the beginning of the movement, and perhaps slightly preceding it, were a series of lawsuits designed to correct misclassification and inappropriate placement procedures. Less of those cases are now being seen in isolation since the issues involved are so closely related to right to education, they are being incorporated into the latter suits.

Third, the suits are no longer being brought on behalf of single categories of handicapped children but rather are encompassing all categories in single actions.

Fourth, although you can't generalize from a single state, in Kentucky, the Federation of The Council for Exceptional Children, the state level professional organization of The Council for Exceptional Children, has entered into a right to education lawsuit as a named plaintiff. Equally interesting, I think, is that they are one of eight organized groups sufficiently concerned with this issue to file suit. Kentucky suggests a couple of things: One, that professionals and professional groups are beginning to step forward and become directly involved in the litigation movement. Kentucky also points to an emerging new set of relationships that have resulted in this instance in a formal marriage between parent groups and professional groups, old adversaries.

Fifth, in the beginning there were many special education administrators who resisted the lawsuits like death, or at least plague. Many educational administrators, of the special education variety, are now welcoming them. This metamorphosis has occurred because of recognition that favorable decisions can provide a very effective lever to pry general education administrators and policy making bodies to let you do all those things that you have wanted to do all along.

Finally, and it really isn't finally, but I can't exhaust this at this writing, the litigation movement has brought about recognition that today in the U.S. there is more than one system of education being provided for handicapped children. Perhaps you are familiar with the dual, three, four, or five-system effort where some children simply are taken away from the responsibility of public education and given to another public or private agency. That has now been exposed and corrective measures are in process.

A third approach to assessing where we are in terms of right to education is that the type of attorneys involved in these suits has changed substantially over time. You may recall, perhaps from hearing or seeing some of these gentlemen, and the one who comes most to mind in portraying the image is one Stan Herr, who was co-counsel in the Mills case in the District of Columbia. Stan Herr's name was really quite appropriate because he has hair that was all over his face and head, truly in the style of the "great society" poverty lawyer. The contrast was apparent at a meeting I attended a few weeks ago in Chicago at which all the attorneys involved in

Abeson, Alan. "Recent Developments in the Courts", in The Right to An Education Mandate, Vol. III of Leadership Series in Special Education, R. A. Johnson, J.C. Gross, R.F. Weatherman, editors. Minneapolis: University of Minnesota, 1974, pp. 69-80

pending right to education lawsuits were brought together. The group was remarkably different, in fact, someone characterized them as being "establishment". I think that essentially that was an accurate observation and I think it is important because it suggests legitimization of the litigative effort. It is apparent to attorneys that it makes good legal and economic sense to bring right to education lawsuits.

A fourth indicator of the status of the right to education effort is represented by meetings such as this one where the focus is the education of all children. In addition, there have been incredible spinoffs relating to legal change for the education of handicapped children. For example, Governor Bond of Missouri, when asked some time ago on nationwide television about his priorities for spending in the state, indicated that "Many of our special children in Missouri don't have access to special education services, and I think that this is – morally this is wrong, and I think maybe the children may even have a constitutional right to this education, so we want to put many more dollars into that." Another example comes from Pennsylvania which when Hurricane Agnes struck, really demolished much of the state and in particular Harrisburg, the capital. There were only two offices that remained open during that crisis, one was the Office of Emergency Preparedness and the other was the Right to Education Office, which suggests just how Governor Shapp felt about this issue. New special education laws and regulations have taken clear direction from the orders and decisions that have derived from Right to Education lawsuits.

It is useful at this point to turn to four specific cases that I think have special importance and I believe suggest some future considerations.

I will not discuss PARC or Mills since I feel that by now most are quite familiar with those early landmark cases. The first case is **Lebanks v. Spears** in Louisiana. This case focused on the denial of education and the absence of appropriate placement and assessment procedures or due process applying to allegedly mentally retarded children. It was much like all the other right to education cases. It was concluded in April with a consent order, which means there was agreement on the part of the parties bringing the suit and the parties who were named as defendants in the suit with the approval of the court. I want to just cover a few of the major points in that agreement. The first relates to the concept of normalization.

The agreement calls for implementation of what has been termed the least restrictive alternative concept. The order specifies that "All evaluations and educational plans, hearings, and determinations of appropriate programs of education and training . . . shall be made in the context of a presumption that among alternative programs and plans, placement in a regular public school class with the appropriate support services is preferable to placement in special public school classes," and so on.

To contribute to the maintenance of the child in programs as close to the norm as possible, the order requires that all children being considered for placement in a program for the mentally retarded must be given an evaluation, periodic review, and an individual education plan.

Third, the order specifies that free public programs of education and training appropriate to the age and mental status of mentally retarded children must be provided for all such children. And finally, in an area that the field has not really yet begun discussing from an implementation point of view, from a teacher training point of view, or from any point of view, is that "Educational and training opportunities will be made available to persons resident of the Orleans parish over twenty-one years of age who were not provided educational services when children." Is this compensatory education? Adult education? What form of education is called for and where should it be delivered and for how long are questions that are just now beginning to be asked.

The second major case is one that really didn't involve the handicapped at all, and that is a very important point to remember when talking about it. Of particular reference is an article from *Exceptional Children*, "The Supreme Court and the Suspect Class," which deals with a case called the **San Antonio Independent School District v. Rodriguez**. This case which dealt with alleged disparities in the distribution of state financial aid to school districts in Texas received wide attention. The extensive attention occurred because the finance issue has possible implications for the nation. But it also drew a lot of interest from those involved with right to education for handicapped children because the Supreme Court seemed to say that there was no right, there was no constitutional right, to an education.

Because of the potentially disastrous implications of the decision for the handicapped, much analysis was done. The tone of the analysis suggests that the decision may actually work in favor of the handicapped. This conclusion is based on the following four points.

First, Rodriguez was a federal decision in a federal court on a question arising under the United States Constitution. In no sense does its result affect state judicial decisions on state law. While state constitutions may have equal protection clauses, nothing prevents their courts from applying more favorable interpretations than did Rodriguez, and, in fact, this happened in New Jersey.

Second, since no reasonable state purpose can be achieved by denying children an education because of being handicapped, the practice of excluding children from schools fails to meet what the attorneys call the rational basis test, which is a test applied by the courts to determine if the state law in question has a reasonable relation to a state activity. Most states are committed by constitution and statute to an adequate or appropriate or suitable education for all children. Consequently, any practice that excludes children from education bears no rational relationship to this commitment, and therefore, according to the attorneys, would be an unconstitutional denial of equal protection.

Third, by and large when handicapped children are excluded from public education, their only recourse is to attend a private program and their ability to do so is dependent almost totally, for the majority, on parental wealth. In the Rodriguez case, the challenge involved the relative adequacy of the education of children residing in poorer school districts that received less state aid. The plaintiffs in right to education lawsuits, however, don't question or haven't really questioned relative adequacy. They have questioned absolute deprivation. In his opinion, Justice Powell noted that every plaintiff had been afforded the basic minimal skills needed for effective speech and informed franchise. But our point is that if one looked hard enough, it would be possible, I think, to find children who have been totally barred from participation in public education, and thus, have no opportunity to obtain what the court felt was minimum education.

Finally, the alleged discrimination was against the poor and the poorer school districts. The court said that the classes in the legal sense presented in the case were too large and diverse to be considered suspect. The class of the handicapped, however, in right to education litigation does not have a problem of identity. The court said that the plaintiffs in Rodriguez lacked these kind of criteria for being defined as suspect. "Being saddled with such disabilities or subjected to such a history of purposeful unequal treatment or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process."

Do those criteria describe a class of people you are familiar with? To me, it sounds like the court very effectively described handicapped children excluded from public education.

I think it is of interest and perhaps of practical value to quote part of the dissenting opinion of Justice Marshall, "In my judgment, the right of every American to an equal start in life so far as the provision of a state's service as important as education is concerned, is far too vital to permit state discrimination on grounds as tenuous as those presented here. Nor can I accept the notion that it is sufficient to remit these appellees to the vagaries of the political process which, contrary to the majority suggestion, has proven singularly unsuited to the task of providing a remedy for this discrimination. I for one am unsatisfied with the hope of an ultimate political solution sometime in the indefinite future while in the meantime countless children unjustifiably receive inferior educations that may affect their hearts and minds in a way unlikely to ever be undone."

The third case that should be cited is called **Case v. State of California.** The action was brought on behalf of Lori Case. It is difficult to reference this case because the child in question is named Lori Case, so I'll be citing the Case case, so don't get confused.

Lori Case is an autistic child who may also possess a hearing handicap. It's not clear exactly what the appropriate diagnosis of this child should be. However, operating under the assumption that she is in fact multiple handicapped, she was enrolled for a period of time in a special state operated program of education for multiple handicapped children. After a period of time, it was decided that she could no longer profit from that situation. Her parents contested the action in a class suit which was brought in California Superior Court. The Court, after listening to the various arguments, decided that the child was in fact incapable of learning and, therefore, could no longer profit from that program and should perhaps be placed in an institution. That language and decision represented a setback in the right to education movement because it is our position that all children do have the right to education and, most important,

that all children can learn. For that reason a new definition of education has been advanced – education is a continuous process of developing life skills needed for effective coping with developmental tasks and demands as well as with environmental tasks and demands. By using this definition many of the activities we have been doing in special education for some time for more **severely** handicapped children and will be doing for more **severely** handicapped children in the near future are quite legitimate. What the California court did, however, was to set aside that broad definition and use a more narrow concept.

The forces working on this case have not let it die and are appealing it. The Council for Exceptional Children, the National Association for Mental Health, the National Association for Autistic Children, and the National Center for Law and the Handicapped will be presenting an amicus curiae brief to serve as a friend of the court stressing that in fact, every child can learn and has that right.

The final case I want to reference is called **Peter Doe v. San Francisco Unified School District.** This case also has been filed in California and involved an eighteen year old high school graduate, who has sued the state and public schools in San Francisco for more than a million dollars. Essentially, the suit has been brought because, although Peter Doe graduated, he can only read at the fifth grade level. Consequently he claims that he was deprived of an education in the basic skills of reading and writing as a result of the acts and omissions of the public school defendants.

The suit has four general areas of actions. Let me just read some of the language to you: negligence, misrepresentation, breach of statutory duties, and constitutional deprivation of the right to education. Most interesting is the allegation presented in the complaint that since graduation from high school, he received tutorial instruction and made significant progress in his ability to read.

Let me put this case and issue into some perspective. The attorney, who has been involved in a number of these cases, said that **Peter Doe** is "simply a forerunner of an effort on the part of parents and citizens to bring to focus through the judicial system attention upon the fact that schools, the educational systems in this society, have failed in some way to provide the Peter Does of this country with the kind of education to which they are entitled.

Up to this point, I haven't said much about adequacy, about minimal education, and not too many other people have either. Yet there has been some attention although minimal by the courts in right to education lawsuits to this area. In the **Harrison** right to education suit, which was dismissed in Michigan, the court made reference to the state's new statute which said that, "A special education plan must be implemented which will provide for the delivery of special education programs and services designed to develop the maximum potential of every handicapped person."

In **Mills**, the court said that the District of Columbia shall provide each child of school age a free and suitable publicly supported education, regardless of the degree of the child's mental, physical, or emotional disability or impairment. The court went on to say that the board of education has an obligation to provide whatever specialized instruction that will benefit the child. I think it is this issue of appropriateness or suitability which **Peter Doe** addresses.

This, I think, brings us to the next area of concern that we should all know of, which may or may not become a major litigative issue. These days much attention is being paid to the courts and lawyers and I think we must recognize that we invited the lawyers in and they've led us, and they've opened up some interesting doors, and are continuing to pursue some interesting approaches to getting at the questions of suitability which I want to describe to you. They, like us, are very concerned that even in the presence of court decrees, consent orders, appropriate law, rules and regulations, there are still some children who are not going to be served appropriately, perhaps for some good reasons, like no money, which is a good reason, but which is of course not acceptable. We know that there are still going to be kids sitting in the principal's office day in and day out because they never get a chance to get an education. Some people say that due process procedures that you are all now familiar with will prevent all this from happening. Paul Dimond, who was one of the attorneys in **Lebanks**, says that, "At this point in time the issue of whether such fair procedure will insure adequate education remains,

frankly, untested. We can be reasonably sure, however, that such procedure operating in lock-step with the right to some education, a la Rodriguez, will serve as a prophylactic against the worse education malpractices."

Merle McClung is another attorney working at the Harvard Center for Law and Education that has been instrumental for some time in this whole area. He has, as answers, three legal approaches for assuring adequate education or, as he phrases it, minimally adequate education, that are worth examining.

McClung begins by talking about the equal protection argument and says that the right to an education is more than simply access, it means that the program provided must be, in fact, educational. And secondly, that the education that is provided must, in some way, be similar or equal to that provided to normal children. At the same time he makes very clear, as did Tom Gilhool, the attorney in PARC, that simply taking a handicapped child and placing that child in a regular program where he cannot learn is tantamount to excluding the child from school. McClung's thesis is essentially that equality must be seen as adequacy and the concept be looked at not in terms of absolute measurements, but rather in relation to the benefits provided to distinct classes or groups of children. Thus you have a definition of equality that would go: equal access to unequal resources to produce unequal outputs. Thus, adequacy becomes a relative rather than an absolute concept.

Despite problems of measurement and/or agreement, we can look at the goals of public education for normal children, nonhandicapped children, and can see that there is a concept of a minimally adequate education that suggests certain kinds of core experiences in certain subject areas. As educators, we say that when students have acquired these minimal competencies, they are, in fact, educated, perhaps only minimally, but at least educated. The argument then becomes, don't the schools have an equal responsibility to provide a minimally adequate education for handicapped children even though what constitutes minimally adequate for them may be different?

Although little mention has been made in this article about the right to treatment lawsuits, they are occurring although not in as great a number as in education. They focus on institutions for the mentally retarded and emotionally disturbed and they advance the argument that persons involuntarily committed to an institution demand the responsibility of government to deliver some services. McClung uses that same argument and says that like those involuntarily confined to state institutions, school-age children, because of compulsory school laws, are involuntarily confined to public schools. Since this concept implies the right to a minimally adequate treatment for the involuntarily committed, McClung continues and says that the right to education implies the right to minimally adequate education, thus justifying the involuntary confinement. The application of these two particular theories and the continued involvement of the lawyers suggest that standards are going to be needed. We are going to have to determine what it is we are supposed to do and, as has been so well asked by Reynolds, Wolfensberger and Blatt,* how well are we doing it?

Finally, McClung talks about state law and regulations as being a basis for attorneys to build on when looking for continued attacks on the legal structure to obtain minimally adequate education experiences for handicapped children. This clearly represents a viable approach since as I mentioned earlier, most of the states have either in statues or in their constitutions words like appropriate, beneficial, needs suited, or proper regarding the education to be provided by their schools. McClung says that, "If the various statutory provisions do not create a right to an adequate education in themselves, lawyers could argue that the relationship between the state and local programs with its numerous written agreements constitutes a contract which the handicapped child can enforce as a third party beneficiary."

There have been, by the way, two lawsuits pre-Rodriguez in state courts where school districts have been found "guilty," I suppose one could use that term, of not providing an appropriate education for two individual handicapped children, one in New York and the other in Connecticut. In both cases, the children went on to private school, profited from the education received there. Also in both cases, the court required that the school district and/or the state pay the cost of that private education.

Before concluding I want to make another important point. The title of part of this document is legislation and litigation. Yet those

**See this volume, page 93 for Reynolds, page 49 for Wolfensberger, and page 15 for Blatt articles.*

are but two of at least four avenues that can be used to bring about legal change for the education of the handicapped. I think all too often, as has been very clear in other contributions to this volume, the potential for changing rules and regulations, policies, guidelines, standards or whatever they are called, where you are from is left unexplored. Yet in some states changes in the regulatory base can achieve great goals with less dramatics, less cost, less time, and with less trouble and anxiety than going to court.

Another legal avenue for change that we have not yet explored at all is state attorney general opinions, which interpret law. We don't know a great deal what force these actually have, but we do know that frequently state and local administrators accept attorney generals opinions as being law, or having the force of law, and consequently, begin changing behaviors to conform with such decisions. Most interesting is that the right to education litigative and legislative movement which has been reinforced in rules and regulations in some states has also caused some attorneys general in other states to rule on whether or not their states are in keeping with these new constitutional directions. As an example in Arkansas, where a law was recently passed requiring full service for all children by 1980, the attorney general ruled, "No, not 1980, now!" We at CEC are studying state attorneys general rulings and will have a publication out, hopefully within a few months, summarizing these rulings across the states and also having some indication how they are perceived in value by practitioners and also what force of law they actually carry.

Recognition of all these avenues is particularly important because maximum pressure must still be brought by all of us and our allies on all fronts to achieve effective implementation, even in the presence of favorable laws, regulations, etc. Clearly, the education of handicapped children is still seen by many school people as an afterthought to be taken care of later. One of the attorneys in Mills said that the case gave public acknowledgment and judicial support to the claim that educational needs were being unmet but that it was not sufficient impedence to secure dramatically altered bureaucratic behavior. Another attorney also said that in the final analysis implementation is largely dependent upon the understanding and cooperation of school men in the field and particularly principals. Thus, the call to action spans through the federal, state, and local levels of government. The greater the ability to generate pressure on all levels using all avenues the greater the likelihood of services to children.

To put all of this into perspective, I want to conclude with a quote from John Dewey who, although not of recent times, certainly laid out some very important messages for us, because as he viewed American education, it was to value each child as "equally an individual and entitled to equal opportunity of development of his own capacities, be they large or small in range . . . Each has needs of his own as significant to him as those of others are to them. The very fact of natural and psychological inequality is all the more reason for establishment by law of equality of opportunity, since otherwise the former becomes a means of oppression of the less gifted."

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Ibid, p. 331.

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THE RIGHT OF ACCESS TO FREE PUBLIC SCHOOLING FOR ALL CHILDREN

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Litigation is busting out all over. There are now three lines of cases germane to your deliberations in these two days. The first began with the case of Wyatt V. Stickney[1] in the Middle District of Alabama. The most recent in that line is a suit brought by six young people in the State of Minnesota against six state schools and hospitals in your state. That line, of course, is the right to treatment line and is concerned with the rights of institutionalized retarded citizens to habilitation, care, treatment, and education in the least restrictive setting, with due regard to rights of privacy and the like. I will not focus particularly on that line of cases[2] but rather on the other two.

A second line is the access to education cases. That line began in Pennsylvania[3]. It is concerned, first, with the proposition that the obligation of the states under the federal constitution and, indeed, under their own laws, is to provide a zero reject system of education — a free, public education to all children, and second, with the proposition that parents and children are entitled to be heard concerning the appropriateness of their educational assignment. Right to education cases have now come to decision in Pennsylvania and Washington, D.C.[4], in Michigan[5] very recently, and is pending now in more than a dozen other states[6].

The third line of cases begins with Diana[7], that is the line in which Martin Glick, from whom you will hear in a moment, is both expert and father or grandfather (No, in fact, Gunnar Dybwad is the grandfather of all of these cases). That line of cases is concerned with the standards and practices used in classifying children by educational assignment[8].

I would like to give you some brief recitation of the legal underpinnings of the access to education cases. As I indicated, they concern essentially two notions: one, zero reject education; and two, the due process right to a hearing.

Gilhool, Thomas K. "The Right of Access to Free Public Schooling for All Children", in Decategorization and Performance Based Systems, and Special Education in Court, Vol. I and II of Leadership Series in Special Education, J. R. Johnson, J. C. Gross, R. F. Weatherman, editors. Minneapolis: University of Minnesota, 1973, pp. 167-177

The claim for zero reject education is really a straight forward one; it has rather simple bases in law and in fact. The legal basis of the claim to zero reject education is to be found in the decision of the U.S. Supreme Court in Brown v. Board of Education[9]. In that case which, as you know, culminated some fifty years of cautious, planned, careful litigation strategy by the National Association for the Advancement of Colored People, the U.S. Supreme Court in 1954 unanimously wrote as follows:

> Education is required in the performance of our most basic public responsibilities. It is the very foundation of good citizenship. It is a principal instrument for awakening the child to cultural values, in preparing him for later training,

and note this next phrase,

> in helping him to adjust normally to his environment. It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. The opportunity of an education when a state has undertaken to provide it is a right which must be made available to all on equal terms[10].

That was the opinion of the U.S. Supreme Court in Brown v. Board of Education. Now, if it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education, then it is even more clear that a retarded child or, more generally, handicapped children, may not be expected to succeed in life if denied the opportunity of an education. Indeed, the risk to the handicapped child of the denial of an education is greater for he is in jeopardy not merely of success but of liberty and of life. You know very well that the rate of institutionalization of retarded children is significantly greater among those children who have been denied access to education in the community; and, you know as well, that for want of those self-help skills which a proper program of education and training would provide to the child, to the retarded citizen, the death rate in those institutions for want of those self-help skills is considerably greater than it would be.

So the jeopardy is not merely jeopardy of success. Beyond that, ordinary children may be expected to learn by wandering in the world, watching television, riding the school bus. A retarded child, however, a handicapped child, requires a formal structured program of education and training if he or she is to learn.

The factual basis of the argument to a zero reject system of education is equally clear and straight forward and rather familiar to you especially. It is that there is no such thing as an uneducable and untrainable child. Or, to put it another way, that every child is capable of benefiting from an education. Or, to put it still another way, in terms of retarded children, for every thirty retarded children, with a proper program of education and training, 29 may be expected to achieve self-sufficiency, both financially and socially; 25 of them in the ordinary way and 4 of them in a sheltered environment. The remaining one of every thirty retarded children, with a proper program of education, may be expected to achieve a significant degree of self-care. That is the fact, and that fact is very clear now. It was not so clear 40 or 30 or even 18 years ago when Pennsylvania and other states were writing laws which excluded great numbers of children from schooling.

In a real sense, of course, the facts had changed in that time. The work that you and your colleagues have done has significantly altered the facts. We know it is possible to teach handicapped children, and we now know it is possible for handicapped citizens to learn. In making the claim for the right of all children to access to a free, public education before the federal court in Pennsylvania those facts, new and thorough going, were presented to the court through the testimony of your colleagues, Ignacy Goldberg, James Gallagher, Don Stedman, Burton Blatt, Gunnar Dybwad and a host of others in reserve.

Litigation is busting out all over. What has happened is that some lawyers have finally come alert to the best thought in your profession and have translated that thought into terms that the court can understand and act upon, into terms that sound of equal protection, into terms that have resulted, as in the Pennsylvania case, in orders requiring that all children must be granted access to programs – free, public programs – of education and training.

The circumstances of Pennsylvania in January of 1971, when 13 retarded children decided to go to court, were not very different from those circumstances that prevail in all of the states of the union. That is to say, Pennsylvania had a long constitutional tradition that said free public education was for everyone[11]. Indeed, at one point in the education code itself, the legislature said, "it is the obligation of the Commonwealth to provide a proper program of education and training to all of its exceptional children"[12]. Despite those words and despite the professional commitment of those who led and administered the system of special education in the Commonwealth to the education of all children, that principle did not prevail.

It did not prevail partly because what the education code gave in one paragraph it took away in another. While the obligation to educate extended to all, still certain children could be excluded as "uneducable and untrainable[13]. The admission of others could be postponed until they had achieved a "mental age of five"[14]. Of course, that meant for any child whose attributed I.Q. happened to be below 35 that this child could never be admitted to schooling. Rather, that child's admission could be postponed forever because, as such things are calculated, that child would never achieve a "mental age of five." And, yet again, some children can be excused from education if they are found to be "unable to profit therefrom"[15].

And, apart from the words of the law which authorized exclusions, there had grown up a laundry list of practices not sanctioned by the law by any means, but nonetheless widespread, that resulted in the denial of access to education for children. A child presents himself at five: Unh-unh. Go away. Come back when you're eight. There was a confusion of compulsory school age with the age at which children are entitled to attend. You reach the age of seventeen, the top of the compulsory school age bracket: Well, go away. You're not toilet-trained. Well, go away. You disrupt the class. Well, go away. And the rest. This series of devices, some sanctioned by law and others not, had led to the exclusion in Pennsylvania of numbers of handicapped children, numbers unnumbered. For in Pennsylvania, as in every one of your states, while the school code required that a census be maintained of all exceptional children, those in school and those out of school, in Pennsylvania, as in every other state in the union, no decent count existed.

That was the situation and those were the arguments that were addressed to the court. The comeuppance, as you know and as some of the materials you've received record it, was a preliminary order on October 7, 1971, and a final order on May 5, 1972, requiring that the Commonwealth of Pennsylvania and all of the school districts in the Commonwealth provide access to a program of education and training appropriate to each child's capacity, access for all retarded children of school age, 6 to 21, and access as well, effectively, for all retarded children from the age of 4. All of the invidious practices and provisions that we've talked about the court said "no" to, and specifically enjoined their use. Further, the court stated and let me quote from the order and consent decree, paragraph 6:

> Having undertaken to provide a free public education to all of its children, including its exceptional children, the

Commonwealth of Pennsylvania may not deny any mentally retarded child access to a free public program of education and training.

And paragraph 7:

> It is the Commonwealth's obligation to place each mentally retarded child in a free public program of education and training appropriate to the child's capacity within the context of a presumption that among the alternative programs of education and training required by statutes to be available, placement in a regular public school class is preferable to placement in a special public school class, and placement in a special public school class is preferable to any other type of program in education and training[16].

Those injunctions were effective immediately for the thirteen individual plaintiffs in the case and for the class of all out-of-school retarded children in the Commonwealth of Pennsylvania, "as soon as possible and in no event later then September, 1972."

The Commonwealth and the defendant school districts were enjoined to prepare certain plans: One, to identify, locate and evaluate all out of school children, and two, to prepare and to deliver the education and training to each of those children. And, as you know, the court appointed two masters to oversee compliance with these orders. The Commonwealth created a Right to Education Office to implement those orders, and – what I view as the crucial elements in implementation. A state task force, composed of the Education Department, the Welfare Department, the Governor's Office and the Pennsylvania Association for Retarded Children, and 28 local task forces, composed of the county superintendent of schools and director of special education, local welfare-mental retardation officials, and the local chapter of the Association for Retarded Children were convened for continuing negotiation and overseeing of the implementation process. By January of 1973, 19,000 out-of-school children had been identified; and most had been accorded access to free public schooling.

Well, that's zero reject education. It gets out-of-school children into school, but to what then are they entitled? They have access, but does access give them education? You'll note that the court's decrees on access were framed in terms of granting to every retarded child access to a free public program of education and training appropriate to his capacity. The language was borrowed from the education code of the Commonwealth of Pennsylvania. Similar

language was adopted by the court in the **Mills** case in Washington, D.C,; but is that just again another hollow formulation of words? The education should be appropriate to the child. It should be a "proper" education as indeed the statute had said in the beginnng.

In relation to that question, the plaintiffs had presented to the court another claim. Namely, the claim for a due process hearing upon any change in educational assignment of any child and after any assignment to special education, periodically for the duration of that assignment.

That claim rested on the common sense notion that, if assigned to the **wrong** educational program, the child would receive no education at all and in effect would be denied access to schooling. But second, the argument rested upon those facts which have come seriously to our attention and which the **Diana** case had addressed in a different way.

Mort Garrison and Don Hammill's study, published in the *Journal of Exceptional Children* in September, 1971, reported the results of a survey of five-county metropolitan Philadelphia, a survey of children in EMR classes. Garrison and Hammill concluded that in five-county metropolitan Philadelphia, at least 26 percent, and very likely as many as 68 percent of the children assigned to EMR classes did not belong there, they had been mis-assigned, they belonged in regular classes. As you know, that study and its results are by no means unique. Jane Mercer and others have found similar things across the country.

It happened that the U.S. Supreme Court had in the winter of 1971, decided a very interesting case that was very much relevant to this state of facts. The case was called **Wisconsin v. Constantineau**[17]. Mrs. Constantineau lived in a little town in Wisconsin. The sheriff of that town was authorized by the laws of the state of Wisconsin, whenever he saw someone publicly drunk too often, to post that person's name in the town square and outside each of the taverns in the town. Mrs. Constantineau found her name posted, and she did not particularly like it. She went to federal court. The federal court said, and the Supreme Court agreed, that indeed her name could not be posted outside the taverns and in the town square without her first being given the opportunity to contest whether indeed she had been publicly drunk too often. In that case the U. S. Supreme Court said as follows:

> The only issue present here is whether the label or characterization given a person by posting, though a mark of illness

to some, is to others such a stigma or badge of disgrace that procedural due process requires notice and an opportunity to be heard. We agree with the district court that Mrs. Constantineau's private interest in her good name is such that those requirements must be met. Only when the whole proceedings leading to the pinning of an unsavory label on a person are in error can oppressive results be prevented[18].

That was the basis of our claim for a right to be heard on change in educational assignment and periodically after assignment to special education. To flesh that out just a bit let me indicate to you what the court ordered. No child's educational assignment could be changed, that is, he could not be moved from regular class to special class, from special class to tuition reimbursement, or to home bound instruction, among the varieties of special classes from EMR to TMR, to brain-injured, to emotionally disturbed, to whatever combinations of and types of programs there may be – no child could be so reassigned without first that child and his parents being given notice in writing of the recommendation for such a change and a statement of the reasons alleged to be the basis of that recommendation. If the parents choose to challenge that recommendation, then before that recommendation could be effective the child and his parents were entitled to be heard. The hearing was to be held in front of the Secretary of Education of the Commonwealth of Pennsylvania or his designee. That hearing was to be held in the local community at a time and place convenient to the parents. The parents were to have access to all of the child's school records before the hearing and to have the right of an independent evaluation of their child by the Office of Mental Retardation field offices in the various counties in Pennsylvania. The child and the parents were to have the right to be represented at that hearing by any person of their choosing, the chairman of the local PARC chapter's education committee, a next door neighbor, a special educator from the faculty of Temple University or Slippery Rock State College, a lawyer, and the right to confront and to question any and all of the employees of the school district who may have information germane to the recommendation and to present any evidence they wish. The decision was to be made by the hearing officer, solely on the basis of the facts put in front of him at that hearing, with the decision to be effective as the decision of the Secretary of Education of the Commonwealth.

Well, that's the due process hearing right. It obtains before any reassignment and it obtains, as well, periodically after any initial assignment to special education. That is to say, automatically every two years, notice of the opportunity of a hearing and a statement or reasons for the child's present assignment must be given to the parents in writing as per the discussion we've just had. And further, any parent who so wishes is entitled to that notice and to that opportunity to be heard annually. If that reminds you just a little bit of the contract notion of special education that Jim Gallagher has been talking about, it was intended[19].

That's the due process hearing opportunity, and that's zero reject education. Together they add up to what has been called the right to education. It means many things; and we can explore in just a moment in discussion, or begin to explore, some of the things that it means. It means that the language that many of us have spoken and responded to for a very long time is no longer appropriate. It means that with respect to the education of handicapped children a new language is required. Let me illustrate.

In the week after the court's preliminary order, October 7, 1971, the individual defendant school districts were obliged to place each of the individual plaintiffs in an appropriate program of education and training. A school psychologist from one of the defendant school districts visited the house of one of the plaintiff children shortly after October 7 and said, "We have the court order and of course will obey it. We have the court order, and I am going to do you a favor. We're going to give Kate another chance." The mother's response you've already grasped. It translates, "You're not going to give Kate another chance, you're not going to do her a favor, you're going to give to Kate that to which she is entitled."

In a second instance, a school psychologist visited the home of another of the children, and said:

> We have the order of the court and of course will obey it. If you want us to, we will put Luke back in school, we'll put him back in that class we had him in two years ago. You remember what happened there? It wasn't the class for him, really. Those children had different learning needs from his; and after two weeks he began to act up, to disrupt, to cause trouble. We had to call you to tell you to pick up Luke and take him home. Well, we've got the court order; and we'll put him back in that class if you want us to. But we expect that in two weeks we'll have to call you and tell you to take the child home. We'll give you the due process notice, of course, and the hearing and all of that; but, what good parents would put their child through all of that.

This mother's response was even more articulate than the response of the first mother, and it essentially said, "It is no longer the case that the child must fit the program, rather it is now the case that the program must fit the child." That is one of the implications of this line of decision.

There is a second set of implications. The right to education cases really do no more than to take the agenda of the best of special educators and to translate that agenda into rules, into procedures, into action.

Under the old regime a school psychologist, a special educator, having examined the child, diagnosed and prescribed an appropriate educational program for the child, and forwarded the recommendation to the superintendent. From the superintendent the psychologist received the reply, 'That's a beautiful piece of work. I wish we could, but we can't. Maybe in a couple of years we'll have a program like that, but we don't now.".

Under the old regime that special educator had little available to him but frustration, perhaps to return to his desk and slam the drawer and act out in other ways. But now, of course, the due process hearing opportunity, to say nothing of the substantive rules, provides him with rather new professional opportunities for, while in a real sense it is the child and the parents who can raise the quality of the child's education to the top of the school system and place the question before the Secretary of Education, it also is the case, in a real sense, that the special educator now may raise that same question and place it before the Secretary of Education, in a context where the rules say the child must be given an appropriate program of education and training. In this new context the special educator may insist that the rules and his professional responsibilities be discharged with respect to each of the children.

In summary, right of access to education and right to due process are now, and these rights represent a opportunity for special educators to provide programs and services heretofore considered out of reach for all but a few.

NOTES

1. 344 F. Supp. 387 (M.D.Ala. 1972), appeal pending in the 5th Circuit, sub nom, **Wyatt v. Aderholt**.
2. Right to treatment cases are pending now in Massachusetts, New York, Georgia, Illinois, Florida, Nebraska, Tennessee and Minnesota.
   Reports on the status of each of the cases discussed herein are available in two periodic publications: (1) Abeson, ed., *A Continuing Summary of Pending and Completed Litigation Regarding the Education of Handicapped Children* (available from C.E.C.); (2) Friedman, ed., *Mental Retardation and the Law: A Report on the Status of Current Court Cases* (available from the Office of Mental Retardation Coordination, H.E.W.); and from the National Center on Law and the Handicapped, South Bend, Indiana.
3. **Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania**, 343 F. Supp. 279 (E.D.Pa. 1972) (final opinion and order) and 334 F. Supp. 1257 (E.D. Pa. 1971) (preliminary order).
4. **Mills v. Board of Education**, 348 F. Supp. 866 (D.D.C. 1972).
5. **Harrison v. Michigan**, C.A. No. 38557, F. Supp. (E.D. Michigan 1972) (court will allow no more than a year for implementation of new state zero-reject legislation). See also the decision of the court denying a motion to dismiss and refusing to abstain in **Lebank v. Spears**, C.A. No. 71-2897, F. Supp. (E.D.La. April 24, 1973) and the subsequent consent agreement.
6. Access to education cases are pending now in Maryland, North Carolina, New York, Wisconsin, Rhode Island, North Dakota, Colorado, Nevada and California and will shortly be instituted in Indiana, New Mexico and Arizona.
7. **Diana v. State Board of Education**, C-70, 37 RFP (N.D.Cal. 1970); **Stewart v. Phillips**, C.A. No. 70-1199-F (D-Mass. 1970); **Larry P. V. Riles**, 343 F. Supp. 1306 (N.D.Cal. 1972); **Ruiz v. State Board of Education**, C.A. No. 218294 (Super. Ct. Sacramento, Cal. 1972); **Guadalupe Organization, Inc. v. Tempe Elementary School District**, C.A. 71-435, Ariz. (Phoenix Dist. Ct., Ariz. 1972).
8. In the most recent litigation questions of classifying standards and practices have been subsumed in the access to education cases.
9. 347 U.S. 483 (1954).

10. 347 U.S. at 493. The Supreme Court in its recent decision in **San Antonio Ind. School District v. Rodriquez**, U.S. , 93 Sup. Ct. 1278, 1295 (1973) upholding the present school finance system was at pains to reaffirm that language in **Brown**. Similarly, the Court was clear in **Rodriquez** that in the school finance matter before it, every child was assumed to be receiving at least "some identifiable quantum of education," but that if in another case the Court were faced with "an absolute denial of educational opportunities to any . . . children," the standards for judgment and the result would be different. 98 Sup. Ct. at 1298-99.
11. Pa. Const., Art. 3, Sec. 14.
12. Pa. Stat. Ann., Tit. 24, Sec. 13-1372.
13. Pa. Stat. Ann., Tit. 24, Sec. 13-1375.
14. Pa. Stat. Ann., Tit. 24, Sec. 13-1304.
15. Pa. Stat. Ann., Tit. 24, Sec. 13-1330 (2).
16. The quotations throughout are from the Orders, Injunctions and Opinion of the Court, reported in full at 343 F. Supp. 276 and in preliminary part at 334 F. Supp. 1258.
17. 400 U.S. 433 (1971).
18. 400 U.S. 436-37.

The "Special" Child Goes to Court

by

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INTRODUCTION

The treatment of handicapped or "special" children is no longer the exclusive province of educators. Questions such as whether a particular child can benefit from some educational program or whether a student should be assigned to a regular or special class are no longer just pedagogical queries. They also pose problems of constitutional dimension. Courts have begun to assume an increasingly important role in deciding just how special children should be identified and educated.

This "judicialization" of special education is a recent development: the landmark decisions in the area are less than a decade old. The legal doctrines upon which courts have relied in shaping the rights of special children have deeper roots. They stem in part from the Supreme Court's holding, in Brown v. Board of Education,[1] that all children are constitutionally entitled to an equal educational opportunity. Yet they extend Brown's concern for the plight of black students to another discrete group—the handicapped—which has been badly treated by the schools. These doctrines are also based upon judicial decisions that assure handicapped adults, such as the institutionalized mentally ill and mentally retarded, a constitutional right to treatment, and in doing so guarantee them something more than incarceration.

To some special educators, legal intervention is a godsend, for it prods the schools into adopting what are regarded as long overdue reforms. Psychologist Burton Blatt, for example, has stated: "More and more I comprehend the powerful positive influence that lawyers, if not laws themselves, now exert within my field of work . . . [Lawyers are] heroes, even now, to some of us today."[2] To more conservative educators the new judicial role is viewed as an intrusion, a unsurpation of decision-making responsibility, an invasion of the legitimate prerogatives of the professionals. But whether one treats the law as a blessing or curse, judicial inquiry into certain special education determinations is a fact of life with which school professionals should reckon, at least for the foreseeable future.

This reality underscores the need for educators, and not only special educators, to understand just what has happened in the past few years, and what that history portends for further litigation. The leading court cases do not raise issues unfamiliar to schoolmen. Instead, they respond to long-standing criticisms of special education practice, and do so in a way that cannot be ignored. The same is likely to be true in the future: for when "special" children (or their families, or parent advocate groups) go to court, they are generally asking for no

*This paper was commissioned by UCEA in Summer 1974. Modest revisions were made which note recent judicial opinions through mid-1976.

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more than what progressive educators tell them is their due. In short, the ways in which schools respond to the challenge of the courts will in no small part determine the extent and nature of judicial involvement in the future.

EDUCATIONAL CRITICISM AND JUDICIAL DECISIONS

Thus far, there are relatively few reported decisions concerning the rights of special children, and many of the critical issues have only recently been posed. But the record is sufficient to warrant both description and some cautious predictions. The general message is clear enough: educators, get your own houses in order, or the courts will do so for you. The current status of educational criticism and relevant judicial decisions as they affect the severely and mildly handicapped may be summarized as follows:

The Severely Handicapped

Most state laws treat the severely handicapped (those whose IQs fall below 30) as ineducable. Such younsters are excused—more accurately, excluded—from all publicly-supported instruction. Many of these children (estimated to number between 250,000 and and 1,000,000) spend their entire lives in state-run institutions that, while providing minimal care, lack the resources to undertake any training in self-help. State-licensed private schools do educate youngsters who have specific handicaps, but because these schools are self-supporting they generally enroll only children from well-to-do families. While a few states (Michigan, New York, and California among them) have sought to alleviate this fiscal inequity by providing educational vouchers for these youngsters, the vouchers rarely meet private school costs; thus, the burden of caring for the severely handicapped falls most heavily on the families who are unable to devote the time and resources needed to ensure adequate educational help.

Even when public school systems provide some instruction for the severely handicapped, what they offer is rarely adequate. Autistic children, for instance, who require costly and highly-structured, professionally staffed special programs are instead often lumped together with youngsters who have different handicaps and need different types of instruction. This approach does not recognize the individual needs of students and therefore does not provide in their continued growth and development.

It is these practices that were first challenged, at the beginning of the decade, and the impact of judicial decisions in this area has been most dramatic. The leading case, Pennsylvania Association for Retarded Children (P.A.R.C.) v. Commonwealth of Pennsylvania[3] and Mills v. Board of Education (Washington, D. C.)[4] have become so widely known in the education community as to merit being termed "landmarks." Their influence has been felt in court rulings in other states as

well, including Louisiana, Massachusetts, and Colorado. P.A.R.C. and Mills say much the same thing: no child is ineducable. As professionals in the field have long known, and public school teachers are beginning to find out, with proper guidance, all youngsters can move from a state of relative dependence to one of relative independence. Both decisions reaffirmed the fact that handicapped individuals have a constitutional right to state support for their education, more precisely, to a program which is "appropriate" or "suitable" to their needs. The fact that offering such a program may cost more than the regular curriculum is not a constitutionally adequate reason for not fulfilling the state's responsibility.

The courts have yet to suggest just what "appropriate" education means. In a suit involving institutionalized adults, both retarded and mentally ill, one federal district court adopted a remedial plan that detailed staffing patterns, housing arrangements, and the like. No similar outcome has been reached with respect to education. Two lawsuits demanding that schools provide a particular special program, not merely access to some publicly-financed instruction, were set aside by the courts, when the state legislatures decided to offer the sought-after program on a state-wide basis.[5] But disputes concerning the meaning of "appropriate" education may be anticipated in the near future. Advocates for exceptional children will insist generally that more and better special instruction be made available to those who literally cannot survive in the society without it.

The Mildly Handicapped

Typically, school districts offer special programs for the mildly handicapped, or at least to certain of these youngsters, such as the mentally retarded. But current and past practices have been criticized on a number of grounds. First, school systems appear to have difficulty distinguishing the normal from the special, and consequently misclassify a considerable number of students. In Washington, D. C., for example, the district itself retested its educable mentally retarded youngsters, and found that two-third of them belonged in regular programs.[6] A similar inquiry, undertaken by independent psychologists working in the Philadelphia metropolitan area, found that one quarter of all children who had been labelled educable mentally retarded were improperly placed, and that an additional forty percent probably had been misassigned.[7] Second, programs for the mildly handicapped invariably enroll a disproportionate number of non-white students, relative to their proportion of the population. In California, for example, the percentage of black children in classes for the educable retarded is more than twice their proportion of school-age youngsters; the same appears to hold true in track assignments, with non-white youngsters preponderant in the slower groups.

Neither of these phenomena, misclassification and minority over-representation, would be perceived as a serious problem were it not for the questionable educational value of most special programs for the mildly handicapped. Studies comparing the performance of matched groups of students in regular and special programs find that, despite the additional resources in special programs, their effect on educational achievement is minimal at best. In addition, students assigned to those

special programs are often looked down on by their peers and teachers. Only infrequently, when children with distinct learning disorders are identified early in their school careers and matched with particularly skilled teachers, do these special classes do much good. More often, they are an educational dead-end, and serve only to confirm the school's conclusion that a child is less capable than his peers.[8]

The converse is also true: some mildly handicapped youngsters who would indeed benefit from special instruction are denied it. This is particularly the case with those whose "handicap" is an inability to speak English. Unless they receive some bilingual instruction, the educational process will remain a mystery to them.

Courts have begun to reckon with these problems in several ways. They have held that the guarantees of the due process clause, which assures individuals a right to be heard before being denied "liberty," apply to school sorting decisions.[9] Both P.A.R.C. and Mills assure parents of children whom the school wishes to label as handicapped the right to a hearing before the placement decision is ultimately made. P.A.R.C. requires that school districts afford parents of retarded youngsters a hearing, presided over by an impartial examiner, to determine the appropriateness of the recommended placement. Mills extends this hearing right to all handicapped children. In both cases, the school district is obliged to demonstrate that special placement is in fact likely to benefit the child. If the district cannot substantiate that claim, then the regular classroom is presumed to be the correct assignment. Some legal scholars have begun to urge courts to go even further, and treat distinctions based on retardation as constitutionally suspect, just as distinctions based on race are presently regarded. Should that view gain judicial acceptance, a showing of "compelling" cause to segregate would be needed to justify assigning mildly handicapped students to classes for the educable retarded. Given the dismal record of those programs, few could be expected to survive such judicial scrutiny.

Questions concerning racial over-representation in special programs have also been subject to extensive litigation. Indeed, few of the suits thus far filed have failed to note the particular plight of the special student who is also non-white, and thus in a sense doubly-handicapped. In Larry P. v. Riles,[10] a federal district court confronted with gross racial disproportionality in San Francisco's program for the mildly retarded sought to address the issue by mandating an end to group IQ testing. While that decision appears to have reduced the total number of students labelled mildly retarded, racial disproportionality has actually increased. Those who brought the Larry P. suit have now reopened the case, urging that the court impose either a moratorium on IQ testing, presumably until some other less culture-bound test can be developed, or establish a ceiling on the number of admissible minority students in order to resolve the problem. Another California case, Diana v. State Board of Education,[11] focused on Mexican-American students, who had been identified as "special" simply because they were not fluent in English. The state agreed to test these youngsters in their native language, but that remedy has not altered the pattern of imbalance,

and the court has now ordered school districts in which disproportionality persists to devise a plan for eliminating the phenomenon.

Finally, several court decisions fault the schools for not recognizing real differences between minority and white students. In Lau v. Nichols,[12] the U. S. Supreme Court concluded that San Francisco's Chinese-Americans were entitled to instructions which took into account their inability to comprehend English. To deny them this special help, the Court seemed to say, was in effect to exclude them from the educational process. Similar claims of "functional exclusion" were advanced by Puerto Rican groups in New York City, who obtained a consent decree entitling them to a full bilingual program. These arguments are supported by the holding in Serna v. Portales (New Mexico) Municipal Schools[13] that Mexican-American students who fare badly in school have a right to bilingual-bicultural instruction. What this last group of cases suggests is that school districts have to take into account real differences in their students' backgrounds. Schools can no longer offer the same program for all, especially when some students are unable to take full advantage of that program because of differences in their background or ability.

THE IMPACT OF COURT DECISIONS[14]

The promise of law reform in this area is real: it imposes formal rationality on school sorting practices, provides heretofore excluded handicapped youngsters with some educational services, and provokes both publicity and the appearance of change. Each of these goals, if reached, will benefit the special child; and none of them should cause the catastrophes that some school professionals have predicted. But we are, at present, a long way from fulfilling the promise of the reformist agenda.

To understand why this is the case requires some sense of the school organization charged with carrying out the judicial mandate. Schools are not malevolent places, staffed with people who are indifferent to the fate of the handicapped and putatively handicapped. There is little justification for the suspicion that educators either dislike students or perversely resist change. Yet two quite different factors, the peculiar nature of "the problem," and certain structural and organizational attributes of present-day special education programs, make it difficult to translate legal reforms into educational reality.

The claims advanced on behalf of special children are divergent. The divergence makes it hard to imagine a coherent reform agenda. It would be difficult, by way of example, for even the most responsive school system to satisfy both middle-class parents who want intensive special programs focused on particularly "learning disabilities" and minority parents who urge that special programs be terminated because of their discriminatory effects. The lack of consensus concerning either the problem or its resolution suggests the wisdom of caution in probing alternative solutions.

Moreover, certain organizational factors militate against change. For one thing, special education invariably has too few resources to do even those things, such as early problem detection and educational intervention, which it can do well. For another, our knowledge about how "best" to treat handicapped children remains woefully primitive. The response to almost any interesting question concerning the education of the handicapped is either that the answer is unknown or that no generalizable beneficial effect of a given treatment can be demonstrated; this is especially the case with respect to the mildly handicapped. Finally, the organizational separation of special from regular education makes ventures at "mainstreaming," which cut across the organizational charts, hard to carry out. The regular system is so used to disposing of its problems by giving them to special teachers that it is disinclined to assume any responsibility for them. What those realities reveal is that more than a court decision or, for that matter, a legislative mandate is needed if special education is to become what the reformers hope to make of it.

These generalizations were borne out in a recently concluded study of the impact of the P.A.R.C. and Mills decisions, and of California legislation designed to make the identification of retarded and educationally handicapped students a less happenstance process. The findings of that inquiry are, in the main, discouraging. While school districts were able to identify previously excluded youngsters, they had little idea as to what sort of education to provide them; and in that regard, the state education agencies were of little help. Programs for children residing in state institutions floundered because of the difficulty of getting the institutional staffs to talk to, much less work jointly with, their education counterparts. Even the procedures designed to reduce the incidence of "bad" decisions appeared to have had only nominal impact. The examiners who conducted due process hearings in Pennsylvania and the District of Columbia tended to assume that whatever the school system wanted to do was "appropriate;" while the examiners were willing to listen sympathetically to the parents, the schools' position usually prevailed. In California, the less structured procedures required by the state served simply to rubber-stamp decisions already made through informal bargaining among teachers, principals, and psychologists. In few instances did children appear to be particularly well-served by these reforms.

It is easy to become overly pessimistic about these findings. They are based on evidence gathered shortly after the decisions were handed down, and follow-up studies suggest that a number of the problems were transitional difficulties. Some districts in Pennsylvania have been able, since the P.A.R.C. decision to expand their programs for the severely handicapped, and have begun to rethink the wisdom of assigning substantial numbers of students to classes for the mildly retarded. In both Pennsylvania and Washington, parent advocates have assisted in rendering the due process hearings in a manner more congruent with original court intentions. California is contemplating passage of new legislation that could conceivably secure better and more diverse special instruction to students and, therefore, more fully protect their rights.

This recounting contains some valuable lessons, both for the educator and for the reformer. First, change in legal standards does not ensure altered school behavior. To the extent that judicially-imposed rules seem impractical or infeasible to school personnel, they may be ignored or altered in operation. Second, some changes are easier than others to accomplish through legal mandate. In Pennsylvania, for example, a coordinated effort by state education officials and an active parents group identified 15,000 children who had previously received no education. That accomplishment is notable, but its significance should not be overestimated. Finding excluded children does not require school systems to undergo organizational change. Rather, it calls for a clever advertising campaign and for funds to conduct a school census. More basic changes, such as implementation of procedural safeguards or the insistence on "appropriate" educational placement, come more slowly. They require a reshaping of the special education program and a reexamination of the range of regular school offerings.

Third, the sorts of changes that P.A.R.C., Mills, and Larry P. contemplate would require wholesale reevaluation of school structures and organizational roles, and consequently may pose potentially threatening developments for school personnel. The status quo is not wholly praiseworthy, but it does offer a functional solution to those charged with teaching and administering schools. If the requirement of "appropriate" placement can be viewed as calling only for a choice among existing alternatives, the status quo is generally preserved; indeed, since many educators view what they have been doing as "best" for the child, they see little reason to change their ways. If due process hearings can serve simply to reaffirm decisions already made, and to mollify irate parents, they will have little organizational effect. Although these practices may subvert the ultimate goals of law reform, they may also constitute the only way school professionals know how to do their jobs.

Fourth, pressure stronger than the mere existence of a legal requirement is required in order to accomplish the ultimate goals of the law reformers. Parent groups may exert such pressure; its force and direction will depend upon whom the parent group represents, and on whether its commitment endures over time. If special educators are securely positioned in the school system, they too may push for reform. A strong commitment by state and district school administrators to adhere to regulations may induce formal rationality. Without the presence of at least some of these factors, legally-mandated alteration in special program practice may not have even nominal effect.

LOOKING TOWARD THE FUTURE

Resolving Tensions in Legal Doctrine

Judicial decisions concerning special students do not yet form a well-settled body of law. While the outcomes have thus far been remarkably consistent in that very few cases find the students' claims

to be constitutionally baseless, there is no settled set of doctrinal positions that can confidently be asserted. This lack of consistent positions may be problem-causing in that the discerning administrator can detect apparent inconsistencies among the outcomes, just as there are inconsistencies among the critiques of special education, and may be at a loss to determine "the" most appropriate course of action. As more and more of these disputes reach the judiciary, the tensions will become explicit and will require resolution.

For example, some suits seek more special instruction, while others urge a reduction of special programs and an end to the clear distinction between regular and special students. In large part, this difference relates to variations among the special children on whose behalf the litigation has been brought. The severely handicapped child cannot function, at least for the short run, outside of a special program. For example, routine drills in the three Rs will make no sense to him. The same is true for the non-English speaking person in that constant exposure to English language instruction will not confront a basic inability to comprehend the language. In both instances, appropriate special help is what is needed. For youngsters whom school psychologists would call "borderline normal," the issue is quite different. These children may need some special assistance, for part of each day, to help them cope with their particular problems; but, for the rest of the time, it seems sensible to treat them just like everyone else. Such treatment is consistent both with the fact that these youngsters are, as the President's Commission on Mental Retardation has noted, "six hour retardates." They are fully able to function outside of school and in all likelihood once they leave school are not discernible from the population at large.

There are, of course, borderline situations that will pose doctrinal difficulties. It is not hard to imagine the following scenario: one school district which abandons classes for the educable retarded is sued by parents who demand a right to "appropriate" special treatment; a neighboring district, which has maintained its educable retarded class is sued by parents of youngsters assigned to it and charged with denying those children an equal educational opportunity. While that hypothetical dilemma has yet to be posed, two California suits, one seeking an absolute ceiling on minority students labelled retarded and the other challenging the existence of an enrollment ceiling on programs for the "educationally handicapped," suggest that such conflicts may not be far away. Until the courts determine which programs must be offered, and which programs, if any, have to justify their very existence, school districts would be well advised to confer with parents before making placement decisions. Litigation of this type is likely to arise only when school and family are at odds with one another.

In some instances, the focus of litigation has been on substantive changes, such as a reduction in the number of minority students in special programs and the development of "appropriate" education for handicapped and non-English speaking youngsters. In other cases procedural fairness rather than a particular substantive outcome is sought. The inconsistency here is more apparent than real. At present, there exists only a handful of generalizable truths that courts or educators, for that

matter, can confidently assert concerning the education of handicapped students. For though it seems that all of these students are capable of profiting from an education, it does not seem intuitively plausible that black children should predominate in classes for students with mild handicaps. It appears that in these latter situations some judicially-imposed rules would make sense. They are also situations in which a constitutional predicate for such rules, such as the guarantee of the equal protection clause of the Fourteenth Amendment, is clear. In most cases, however, the "right" outcome is not so obvious. A court could not, even if it wished to, mandate the best educational program for every special child. Nor is it clear that it would have the constitutional warrant to undertake the task. But courts can recognize the importance of such individual decisions, and insist at the very least those individual decisions be made fairly. The guarantee of due process, if fully implemented, accomplishes this. It exposes to public purview the basis upon which decisions are being made, thus encouraging greater professional care in decision-making. And it permits parents and outside professionals to add pertinent information to the decisional calculus. Moreover, rules and procedures are not quite as dichotomous as this discussion might indicate. In each instance where procedural protections have been secured, the court has imposed a general rule to guide the inquiry, insisting that those seeking more "special" treatment for a particular child bear the burden of legal persuasion in the hearing. Within that framework, the decision-making process may be able to function effectively.

The tension most troublesome to those concerned about wise policy-making arises between those whose special concern is with the plight of minority students and those who generally find fault with programs for the mildly handicapped. If one is acting on behalf of black youngsters, it makes considerable political sense to insist upon an upper limit on the number of minority students who may be labelled "special;" indeed, that approach may appear the only feasible way to overcome the overrepresentation problem. Yet imposing a quota requirement implicitly embraces and sustains existing classifications, such as educable retardate, whose pedagogical justification is at best dubious. Such quota practices only serve to add another level of arbitrariness to existing practices and in doing so do not respond to real educational problems but only to statistical nicety and political reality. Over time, perhaps, the development of adaptive behavior tests and the like will render school districts better able to discern the abilities of those who fare badly on standardized tests. Or, if schools come to recognize that full-day special programs for such youngsters are time andpotential-wasting, the problem of overrepresentation may quiety disappear. But until one of those things happens, school districts may find themselves obliged either to undo racial and ethnic enrollment disparities in special education programs, or explain to a court why they cannot.

Devising Remedies

Thus far, the courts that have spoken to the rights of special children have done so in quite broad terms. This is less the case with

respect to due process, where judges can rely on well-established precedents in other institutional contexts, than with respect to substantive remedies. The judicial language remains fixed at the level of generality using such terms as the need for an "appropriate" or "suitable" education. But if it becomes clear that this standard is being used by school districts to preserve programs that have previously been tried and found wanting, further specificity can be anticipated. This has already happened with respect to other institutionalized handicapped persons. Specificity of this sort is not routinely contemplated because courts are sensitive to the political and institutional issues that such intervention poses. It is nonetheless consistent with the broad equity powers courts possess in designing remedies suited to the problem at hand.

If more specific decrees can be anticipated, they are likely to take one of two forms. They may require schools to create particular programs in order to meet constitutionally-cognizable needs. Using the Lau argument which states that Chinese-Americans are "functionally excluded" from schools conducted only in English, some decrees may find that other groups, such as those with particular handicaps and those whose opportunity for school success is impaired by linguistic or cultural factors, are also excluded from public education conducted in "standard English." If that argument prevails, it would oblige school districts substantially to diversify their offerings in order to reckon with real differences.

Another, and quite different possibility, is the development of new procedures intended to match a child's particular needs to a school program. Sometimes this matching can be quite mechanical. Where children have been excluded from school, either because of alleged ineducability or because of truancy, courts have insisted that they be offered remedial instruction to help them recover lost educational ground.[15] More imaginative approaches have also been adopted. In LeBanks v. Spears,[16] a New Orleans suit, the school district agreed to enter into a "special education contract" with each handicapped child, specifying the precise nature of the program that it would offer. Family approval was required before the school's obligation could be satisfied. One educator has proposed going further, and putting a two year time limit on such contracts. A mildly handicapped youngster who had not progressed out of special classes by that time would be entitled to an educational voucher in an amoung equivalent to the school's cost in educating that youngster. This voucher could then be used at a private school.[17]

Courts may also find themselves being asked to reallocate resources among special and regular programs. Doctrinally, that is a very difficult task, for while the Supreme Court has asserted the power to raise and disburse revenues, it has never been put to the test of doing so. But where state legislatures or school districts refuse to approve needed funds, judicial insistence that they do something may be the only way that the constitutional rights of special children can be satisfied.

The most frightening possibility from the point of view of the educators, is that courts will extend the scope of the Supreme Court's decision in Wood v. Strickland,[18] which held that students whose "clear" constitutional rights had been violated could recover monetary damages and will award similar relief to children who have been wrongly labelled as special education students. In two cases such damages have been sought, with inconclusive results: in one instance, the settlement included the award of nominal (one dollar) damages to each misclassified child, while the other suit remains pending. Legally, the justification for such a ruling in clear enough. Where the misassignment is based on the demonstrable negligence of school officials, and where the error can be shown to have caused some educational harm, the imposition of damages seems a reasonable remedy and maybe the only remedy likely adequately to compensate the child for what has been suffered. The spectre of damage awards might more effectively prod school professionals into reexamining their practices than any other, less directly-felt, court order.[19] What seems most likely to dissuade courts from embracing a damage remedy, at least in the short run, is the prospect that such suits would bankrupt school systems or at least force them to increase their liability insurance. Such an argument, however, hardly constitutes a principled rebuttal of the child's claim.

LEGAL REFORM AND SCHOOL REFORM

One thing is certain: for the next several years, more and more special education issues will be presented to the courts, and more and more school districts will find themselves in legal difficulty. What happens as a result of this new litigation will depend, in part, on how far courts are willing to go in extending what are at present quite nebulous constitutional rights of "special" children.

The Supreme Court will ultimately have the last word on the doctrinal questions. That Court has, in recent years, evidenced marked unwillingness to act as a "super school board;" but it has demonstrated its sympathy to those individuals who are totally denied schooling or who receive less than minimally adequate education.[20]

Equally important will be the actions that states and school districts undertake voluntarily, either to forestall litigation or to change educational practices. As states begin to enact legislation that guarantees to all children, not just those who are easy to teach, the right to an education that fits their particular needs, litigation concerning the rights of the severely handicapped will be unnecessary. In Colorado, among other states, this has begun to happen. As states recognize that special children need procedural safeguards to protect them against misplacement in classes for the handicapped, they will follow the lead of Massachusetts and insist upon the proceduralization of the placement process which in turn should reduce the need for additional litigation. And as states begin the even more basic task of reevaluating whether the delineation between programs for the mildly handicapped and regular education is beneficial to anyone and draft laws that encourage programmatic mergers, some of the most profound doubts concerning the educational efficacy of the enterprise which would otherwise be raised in court will be eased, if not put to rest.

If this happens, it will be all to the good in that legislators are better able than judges to adduce the financial and organization ramifications of education reform.

School district practice will also have profound influence on what role courts ultimately play with respect to special education. Many of the suggested state-wide reforms, such as adoption of procedural safeguards, could be adopted equally well by individual districts. More importantly, if bridges between the special and regular school worlds can be constructed and if children can be assured of discrete (and discreet) help without having to bear the label "special," then many of the previously-noted concerns will simply vanish.

Courts can insist on adherence to constitutional standards in defining the minimum obligation of school districts. But the ways in which both regular and special children are best educated will not be determined by the judiciary. These depend ultimately (as they always have) on the resources at hand and upon the knowledge, good will, and organizational capability to use those resources wisely. Questions concerning the education of exceptinal children have been with us for a long time. Judicial reexamination of these questions has forced, and will continue to force, all concerned parties to reconsider what they are doing to and for special children. Cases such as Mills and P.A.R.C. have assured exceptional children that they, like everyone else in the society, have certain basic legal rights. But court decisions cannot and will not provide the determinative resolution to these problems and will not fix the appropriate bounds of the rights of the handicapped. Even after the special children have gone to court, those tasks will be primarily the responsibility of the education profession.

FOOTNOTES

[1]347 U.S. 483 (1954). For a general discussion of the impact of law upon educational policy, see D. Kirp and M. Yudof, Educational Policy and the Law (Berkeley: McCutchan Publishing Co. 1974).

[2]Blatt. Introcution to "Symposium: The Legal Rights of the Mentally Retarded," Syracuse Law Review, 23 (Winter, 1972), pp. 991-1115.

[3]343 F. Supp. 279 (E.D. Pa. 1972). These cases are seldom reported in a publication readily accessible to educators. General publications, such as Education U.S.A., and such specialized journals as Exceptional Children, do enable the educator to keep abreast of current developments. The Department of Health, Education, and Welfare also publishes a quarterly publication on legal developments with respect to handicapped students. See also Kirp and Yudof, supra Note 1 at 664-721, for excerpted versions of these cases as well as relevant discussions in the education literature.

[4]348 F. Supp. 866 (D.D.C. 1972).

[5]Harrison v. Michigan, 350 F. Supp. 846 (E.D. Mich. 1972); Tidewater Society for Autistic Children v. Tidewater Board of Education, No. 426-72-N(E.D. Va., Dec. 26, 1972) (Unpublished opinion).

[6]See Hobson v. Hansen, 269 F. Supp. 401, aff'd en banc sub nom., Smuck v. Hobson, 408F. 2d 175 (D.C. Cir. 1969).

[7]Garrison and Hammill, "Who Are the Retarded?" Exceptional Children, 38 (September 1971), pp. 13-18.

[8]This research is summarized in Kirp "Student Classification, Public Policy and the Courts," Harvard Educational Review, 44 (February 1974), pp. 7-52.

[9]In Goss v. Lopez, 419 U. S. 565 (1975), The Supreme Court held that minimal procedural protections attach to short term suspensions; Goss reinforces the possibility that similar protection will be constitutionally afforded to handicapped students. See generally Kirp, "Proceduralism and Bureaucracy: Due Process in the School Setting." Stanford Law Review (forthcoming, 1976).

[10]343 F. Supp. 1306 (N.D. Cal. 1972).

[11]No. C-70-37 (N.D. Cal., July, 1970) (consent decree). See also Guadalupe Organization v. Tempe Elementary School Dist. No. 3., Civil No. 71-435 (D. Ariz. Jan. 24, 1972) (consent decree).

[12]414 U.S. 562 (1974).

[13]351 F. Supp. 1279 (D.N.M. 1972).

[14]Both the concepts and the case studies described in this section are examined in considerably greater detail in Kirp, Buss, and Kuriloff, "Legal Reform of Special Education: Empirical Studies and Procedural Proposals," University of California Law Review, 62 (January, 1974), pp. 40-155. This article appears in slightly altered form, in N. Hobbs (ed.), The Futures of Children (San Francisco: Jossey-Bass Co., 1975).

[15]See Knight v. Board of Education, 48 F.R.D. 115 (E.D.N.Y. 1969).

[16]Civil No. 71-2897 (E.D.La. 1973). Issues addressed in this case and elsewhere in this article are now treated in PL 94-142. For a detailed analysis of this legislation see, "An Analysis of PL 94-142," Washington, D. C., National Association of State Directors of Special Education, 1976.

[17]See Gallagher, "The Special Education Contract for Mildly Handicapped Children," Exceptional Children, 38 (March 1972), pp. 527-529.

[18]420 U.S. 308 (1975).

[19]See Sugarman, "Accountability Through the Courts," School Review, 82 (February, 1974), pp. 233-259.

[20]See San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973) (dictum).

Handout

Definitions of Legal Terms:

Litigation—the process of carrying on a lawsuit in a court of law.

Legislation—that part of the law which has been enacted by a legislature, state or federal.

Plaintiff—the complaining party in a lawsuit; the person or legally recognized entity which begins the suit, and the person or entity which seeks relief or legal redress in a court of law.

Defendant—the person or entity against whom a lawsuit is brought; the person or entity from whom legal relief or redress is sought.

Appellant—the appealing party from a prior judicial decision.

Appellee—the opposing party in an appeal from a prior judicial decision; the appellee ordinarily will be defending or justifying the prior decision while the appellant will be attacking on legal grounds the prior decision.

Abrogation—the process or act of abolishing, repealing, or cancelling the legal effect of some act, generally a legislative act which has been previously enacted into law.

Mandate—a charge or command; e.g., a federal mandate is a charge or command to the nation.

Statutory mandate—a command effected through legislative enactment of law; a legal requirement originating from a statute, state or federal.

Statutory—an adjective describing a rule or set of rules of law which have been enacted by a legislative body, state or federal.

Libel—a written defamatory statement; defamation harms the reputational interest of a person.

Liable—responsible in the legal sense for an action taken or one not taken when a duty required the action to be performed and it was not performed.

Prima facie evidence—legally sufficient to sustain a claim unless rebutted or otherwise disproved.

Nolens volens—whether willing or unwilling; consenting or not.

Stare decisis—the policy of following rules or principles laid down by prior judicial decision.

Tort—a wrongful act for which a civil action will lie; a tort does not involve a breach of contract. Negligence is an example of a tort.

LEGAL PROTECTION FOR HANDICAPPED STUDENTS IN THE SCHOOLS

by
Barbara J. Kerr
The University of Kansas

Protection must extend not only to handicapped students but to the adults involved with those students. It is for this reason that this unit has been created.

The teacher trainee can, by reading the materials presented herein, avoid many otherwise difficult situations by being armed, as it were, with previous information. Teachers may also find themselves serving in a child advocate position through the information they gain from these materials.

Further, when questioned by members of the public at large, the teacher trainee can respond in a knowledgeable manner, maintaining feelings of personal dignity and value as a representative of the school district in which he serves.

Teacher Trainee Outcomes

Upon completion of this unit, the teacher trainee will be knowledgeable as to those sections of our national laws and constitutional amendments which provide protection for the handicapped student. Further, the teacher trainee will be able to discuss the Kansas State Plan for Special Education.

Instructor Information

Prerequisites:

No specific knowledge is necessary for the teacher trainee prior to beginning this unit although it would be most beneficial to have completed and have gained information from the preceding section on litigation and legislation. Material required for this unit is contained in this source book.

Organization:

This unit is organized around those guidelines such as federal laws and amendments which deal directly with the legal protection of handicapped students. Further, the Kansas State Plan for Special Education has given consideration to those areas dealing with the same type of material. The teacher trainee is asked to prepare a written paper dealing with the implications these mandates have on the schools and their employees.

Content Overview:

The material presented covers mandates of national importance and state requirements which have the most widespread effect on schools. Included also is material presented by a national organization in digest form to further inform the teacher trainee.

Suggestions for Teaching:

This unit could be completed in four class sessions of one hour each. If there are to be oral presentations, as suggested, more class time will be required dependent upon the number of teacher trainees enrolled. During this session, questions and further discussion can ensure that the teacher trainees have the required information.

Suggestions for Evaluation:

Along with the professor's evaluation of the oral reports regarding a selected reading, short essay, or short answer questions could be administered to evaluate the skills gained in this area. Examples of short exercises to be used in class are given which can assist in measuring the ability of the teacher trainee to apply what has been learned.

LEGAL PROTECTION OF HANDICAPPED STUDENTS IN THE SCHOOLS

by
Barbara J. Kerr
Stephen P. Foster

Prospectus

How much can I say to the parents about the rights of their handicapped child? How do I know where the child best fits in the school society? How much information are the parents (or others) allowed to have regarding the child? How shall I handle the problem of a foreign language being used in the home causing some communication difficulties in conferences? Making decisions about such matters becomes more and more important to the teacher. This unit is designed to give a background of information which will be helpful in easing the decisionmaking task for the teacher. An awareness of and application of laws dealing with the protection of handicapped students is part of the purpose of this unit.

Objectives	Enabling Activities
1. The teacher trainee will be able to discuss in writing the implications of the federal and state mandates and amendments for the schools in educating handicapped students.	1. Reading 1: Meyen. 2. Read and study class handouts. Handout 1: Selected provisions of the Buckley Amendment. Handout 2: Uses of selected constitutional amendments. 3. Reading 2: CEC Digest of State and Federal Laws. 4. Reading 3: Kansas State Plan. 5. Discuss until class develops an understanding of administrative problems, least restrictive environment implications, financial needs, procedural responsibilities, support services required, and program areas covered. 6. Paper or report on "Extension of Legal Protections through the Laws to Handicapped Students in the Schools."
2. The teacher trainee will present in class a review of a selected reading regarding the legal protection of handicapped students.	1. Choose and read an article from the suggested reading list or one selected by the student. 2. Outline article or oral presentation to class members. 3. Make oral review to class.

Readings

Edward L. Meyen, *Exceptional Children and Youth: An Introduction*, Denver: Love Publishing Company, 1978, pp. 9-25.

Council for Exceptional Children. *Digest of State and Federal Laws: Education of Handicapped Children*. Nancy Bolick, editor. Reston, Virginia: Council For Exceptional Children, 1979, pp. 52-1—52-14, 16-1—16-5.

Kansas State Plan for Special Education. Topeka, Kansas: State of Kansas, Fiscal Year 1980, pp. 75-95.

Recommended Readings

Abeson, Alan and J. Zettel. "The End of the Quiet Revolution: The Education for All Handicapped Children Act of 1975." *Exceptional Children*, 44 (October, 1977), pp. 115-128.

Ballard, Joseph and J. Zettel. "Public Law 94-142 and Section 504: What They Say About Rights and Protections." *Exceptional Children*, 44 (November, 1977), pp. 177-184.

Ballard, Joseph and J. Zettel. "Fiscal Arrangements of Public Law 94-142." *Exceptional Children*, 44 (Fall, 1978), pp. 333-337.

Bersoff, Donald, et. al. "Special Education for Preschoolers: Impact of the Education for all Handicapped Children Act of 1975." *Journal of School Psychology*, 15 (Summer, 1977), pp. 190-191.

Bierly, Ken. "P.L. 94-142 Answers to the Questions You're Asking." *Instructor*, 87 (April, 1978), pp. 62-65.

Humes, Charles W., III. "School Counselors and P.L. 94-142." *The School Counselor*, 25 (January, 1978), pp. 192-195.

Lathen, Levi. "Assessing Special Education Needs: Areas For Reapprasial." *The Educational Horizon*, 56 (Spring, 1978), pp. 147-153.

McClung, Merle. "The Legal Rights of Handicapped School Children." *Educational Horizons*, 54 (Spring, 1976), pp. 25-32.

Remirez, Bruce and Barbara Smith. "Federal Mandates for the Handicapped. Implications for American Indian Children." *Exceptional Children*, 44 (April, 1978), pp. 521-528.

Tindall, Lloyd W. "Education for all Handicapped Persons: A Mandate for the New Year." *American Vocational Journal*, 53 (January, 1978), pp. 26-29.

Warnat, Winifred I. "In-Service Education: Key to P.L. 94-142's Service to Handicapped Children and Youth." *Educational Leadership*, 35 (March, 1978), pp. 474-479.

NCLH Legal Monograph: Rights of the Handicapped To An Equal Educational Opportunity. The National Center for Law and The Handicapped, Inc., 1235 North Eddy Street, South Bend, Indiana, April, 1977. (Green Law Library KF/4155/.R53).

Suggested Class Exercises

1. Mrs. Stone sees you in the grocery store as you are both shopping. She strikes up a conversation with you regarding one of the students in your special education class. She wants to know how he gets along in "that classroom" since community gossip suggests he is a "hell-raiser" or "trouble monger." What will you do in response to her question? (Suggestion: through your knowledge of the Buckley Amendment and through professional ethics application, how can you respond?)

2. In Kansas, where English is the native tongue of most residents, is it necessary to be concerned when you find a student who comes from a home where another language is predominantly spoken? (Suggestion: consider the HEW, Title VI ruling.)

3. You are a teacher of a high school special education class. It appears through two conversations with one of your male students that you have a potential drop-out on your hands. What could you suggest which might interest him? (Consider Vocational Education Act, 1963.)

Handout 1

The following information concerns selected features of a complex federal statute, the Family and Educational Privacy Act of 1974, 20 U.S.C. section 1232g. The information given does not purport to be a complete description of the provisions of this law. The handout highlights some areas which may be of interest to teacher-trainees but is not a substitute for the statute itself. Questions concerning the applicability of this law to specific situations arising in school settings or elsewhere should be directed to a competent attorney or knowledgeable school official.

1. In general, parents, or students 18 years or older, or students who are attending an institution of post-secondary education, are entitled to inspect and review "the education records" of the student held by an educational agency or institution. Under the statute, the term "educational agency or institution" means any public or private agency or institution which is the recipient of federal funds under any applicable program. 20 U.S.C. sec. 1232g(a)(3). The term "education records" is also defined in the statute. Subject to various exclusions listed in the statute (20 U.S.C. sec. 1232g(a)(4)(B)), education records means "those records, files, documents, and other materials which—
   (i) contain information directly related to a student; and
   (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. sec. 1232g(a)(4)(A))

One important exclusion (to teachers) is described as follows:

> "(B) The term "education records" does not include—
>
> (i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute; . . ." (20 U.S.C. sec. 1232g(a)(4)(B))

2. Procedures are to be established by each educational agency or institution "for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made." (20 U.S.C. sec. 1232g(a)(1)(A)).

3. The statute also requires that "the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education," are to be informed "of the rights accorded them by this section." (20 U.S.C. sec. 1232g(e)).

4. The following highlights some, but not all of these rights:

   a. *Inspection and Review*—the right to "inspect and review the education records of their children" (20 U.S.C. sec. 1232g(a)(1)(A)).

   b. *Opportunity for a hearing* is to be provided—under federal regulations, the educational agency or institution is to provide an opportunity for a hearing to challenge the content of a "student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records." (20 U.S.C. sec. 1232g(a)(2)).

   c. *When information concerning one student is commingled with information concerning other students, the right to inspect and review education records is limited.*

"If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material." (20 U.S.C. sec. 1232g(a)(1)(A)).

d. *Right to limit the release of education records other than "directory information," unless the parent has informed the educational agency or institution that such information should not be published without parent's prior consent*—Certain categories of persons/organizations are exempted from the general rule of requiring written parental consent prior to release of education records or material contained therein. (*See, e.g.*, 20 U.S.C. sec. 1232g(b)(1)).

e. Under the general rule requiring prior written consent before release of education records, or personally identifiable information contained therein, the *prior written consent must*:

specify the "records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or, (B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency." (20 U.S.C. sec. 1232g(b)(2)).

f. *Transfer of records*—

When education records are transferred to a school or school system in which the student seeks or intends to enroll, the student's parents are to be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record. (20 U.S.C. sec. 1232g(b)(1)(B)).

g. *Access record requirement*—

A record is to be kept by each educational agency or institution of individuals, agencies, or organizations which have requested or obtained access to a student's education records. The transfer of information to third parties is also regulated. In connection with both of these principles, the statute provides that:

"Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system." (20 U.S.C. sec. 1232g(b)(4)(A)).

"With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student." (20 U.S.C. sec. 1232g (b)(4)(B)).

h. *Student acquires right of parents when student is 18, or when he or she is attending an institution of postsecondary education*—

Once a student is 18, or attending an institution of postsecondary education, the same rights afforded to parents, and the power to give or withhold written consent when consent is required, are then rights which belong to the student. The statute provides in this connection that:

"For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student." (20 U.S.C. sec. 1232g(d)).

5. *Summary*—the statute regulates, by cut-off of federal funds, the access to and disclosure of education records and personally identifiable information therein. Important rights are given to parents of students, and when students are eighteen, or when they are attending postsecondary educational institutions, these rights are granted to students.

Handout 2

Use of Constitutional Amendments as Legal Protections
for Handicapped Students in the Schools

The First Amendment provides that:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fifth Amendment provides that:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Section 1 of the Fourteenth Amendment provides that:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 5 of the Fourteenth Amendment provides that:

"The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

billion would have been required in 1971. By the 1970s, the education of exceptional children and youth required major investments of public dollars. This is particularly significant in that the National Advisory Committee for the Handicapped reported in 1975 that only 55 percent of handicapped children and youth were being served appropriately.

When one becomes aware of the profound changes which have occurred in training of personnel, in growth of knowledge, technology, and program expenditures, and the increasing influence of special interest groups, one can understand more readily that philosophies of educating the handicapped, as well as criteria for classifying persons as handicapped, *can* change. One also must recognize that these changes represent the capability of professionals and society in general to benefit from experience and acquired knowledge, and to use this input as a basis for implementing changes with the intent of improving the lives of a large population of individuals.

What has occurred has been essentially a growing concern for the needs of all children and youth—in particular exceptional children—at a time when society has had not only the legislative base and knowledge, but the fiscal wherewithal as well. Beliefs about how exceptional children should be taught have changed along with views on the schools' responsibility to this population. Many children classified as handicapped today were not identified as handicapped as recently as 20 years ago, and children now considered among the responsibilities of the public schools once were considered the responsibilities of institutions or parents.

Rarely since adopting the policy of universal education have changes of this magnitude occurred in the field of education. Moreover, the next 20 years may well reflect comparable changes. The following section describes federal and state legislative provisions designed to assure an improved future for exceptional children and youth. These provisions are specific, and they are intended to maintain the progress made over the past several years.

LEGISLATIVE CONTRIBUTIONS

A review of federal legislation clearly illustrates the increased involvement of federal government during the past 20 years in developing programs and providing benefits for the handicapped. Weintraub, Abeson, Ballard, & La Vor (1976, pp. 103-111) identified 195 federal laws specific to the handicapped enacted between 1827 and the passage of PL 94-142 in 1975. Of these laws, 61 were passed in the period from March 1970 through November 1975. In 1974, 36 federal bills which directly or

Meyen, Edward L. Exceptional Children and Youth: An Introduction., Denver: Love Publishing Company, 1978, pp. 9-25 Reproduced by Permission.

indirectly affected the handicapped and gifted were signed into law (La Vor, 1976, p. 96).

When federal laws are passed, they often are followed by legislation at the state level to bring state statutes into compliance with the federal law. In some cases, states are quicker than federal government to pass laws that reflect trends or the delivery of services. During the early 1970s, congressional emphasis on the handicapped was paralleled by an effort by state legislatures. Weintraub et al. (1976) reported that:

> In 1975 a survey of state law indicated that all but two states had adopted some form of mandatory legislation. The survey further revealed that 37 of the 48 states with mandatory legislation adopted their current special education legislation since 1970. These developments make it clear that state legislators are now aware that no longer can the provision of appropriate education opportunities for handicapped children be considered optional. Of note is that this period of extensive expansion corresponds with the beginning of the right to education litigative movement (p. 83).

Legislation is essential to assure that the rights of individuals will be protected, that services will be provided, and that a basis for quality control will be ensured. The enactment of legislation, however, does not guarantee that funds required to implement the legislation always will be appropriated at a sufficient level. Nor does legislation guarantee that compliance will be enforced. For example, although most states have had compulsory attendance laws for over 50 years, requiring school attendance until age 16, large numbers of handicapped children have not been in school. This was particularly true prior to the mid-1960s. Goodman (1976) estimated that one million handicapped children and youth still are excluded entirely from public school systems.

Implementation of laws governing human services is greatly dependent on clear regulations, responsive public and professional advocacy groups, and significant consequences for failure to comply. These conditions have not always existed in terms of legislation pertaining to the handicapped, but they do exist today. This is especially true with reference to advocacy groups.

Legislation serves to define public policy. Thus, persons interested in the study of exceptional children and youth must be familiar with federal and state legislation. A detailed review of legislative history is beyond the scope of this discussion, but three federal acts have significant impact on the future of educational practices and require particular attention. These laws are:

—PL 93-380, the Education of the Handicapped Amendments of 1974
—PL 94-142, Education for all Handicapped Children Act, passed in 1975
—Section 504 of the Rehabilitation Act of 1973.

PL 93-380

Public Law 93-380 was passed in 1974 to extend and amend the Elementary and Secondary Education Act of 1965. A major implication of this law for the handicapped is the statement appearing in Section 801 of Title VIII which established national policy on equal educational opportunity:

> *Sec. 801.* Recognizing that the Nation's economic, political, and social security require a well-educated citizenry, the Congress (1) reaffirms, as a matter of high priority, the Nation's goal of equal educational opportunity, and (2) declares it to be the policy of the United States of America that every citizen is entitled to an education to meet his or her full potential without financial barriers.

In the future, this section of the act may be referred to as an historical statement of public policy.

Specific provisions for the handicapped are included in part B of Section 611 through Section 621; and provisions having specific implications for educational practice are included in the amendment of Section 613 (A). Because it represents a major statement on due process procedures and serves as a basis for many of the provisions in PL 94-142, this section is reported verbatim and will be elaborated on in the discussion of PL 94-142.

> (12) (a) Establish a goal of providing full educational opportunity to all handicapped children, and (b) provide for a procedure to assure that funds expended under this part are used to accomplish the goal set forth in (a) of this paragraph and priority in the utilization of funds under this part will be given to handicapped children who are not receiving an education; and
>
> (13) provide procedures for insuring that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children including, but not limited to
>
> (a) (i) prior notice to parents or guardians of the child when the local or state educational agency proposes to change the educational placement of the child, (ii) an opportunity for the parents or guardians to obtain an impartial due process hearing, examine all relevant records with respect to the classification or educational placement of the child, and obtain an independent educational evaluation of the child, (iii) procedures to protect the rights of the child when the parents or guardians are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (not to be an employee of the State or local agency involved in the education or care of children) to act as a surrogate for the parents or guardians, and (iv) provision to insure that the decisions rendered in the impartial due process hearing required by this paragraph shall be binding on all parties subject only to appropriate administrative or judicial appeal; and

> (b) procedures to insure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and
>
> (c) procedures to insure the testing and evaluation materials and procedures utilized for the purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory.

PL 94-142

Public Law 94-142, the Education for All Handicapped Children Act of 1975, is an amendment to Public Law 93-380. It has been described as the "Bill of Rights for the Handicapped" (Goodman, 1976) because it is designed to correct inequities on behalf of the handicapped. The Act passed in the House by a vote of 404 to 7 and in the Senate by 87 to 7. This margin of support is particularly noteworthy because of the concept of perpetuity embedded in the law.

The Rules and Regulations for this Act were published in the *Federal Register* (August 23, 1977). Because the regulations provide specific directions for implementation, the reader is referred to that document as a primary reference. The law includes several definitions, priorities, and conditions which, for purposes of this discussion, will be referred to as special features.

1. Free and appropriate public education (FAPE) is a basic requirement of the law. It means that every handicapped child and youth must be provided special education and related services at public expense.
2. Special education is defined to incorporate specially designed instruction to meet the unique needs of handicapped children. Specially designed instruction may include classroom instruction, instruction in physical education, home instruction, and instruction for hospital and institutional application. The law, in defining special education, repeats the reference to a free and appropriate public education by stating that "special education must be provided at no cost to parents or guardians."

   The reference to physical education is unusual in that most definitions of special education appearing in laws and textbooks focus on education and support services but have not identified physical education as part of special education services. The intent of Congress is that physical education be provided to all handi-

capped children (Irvin, 1976, p. 3), and incorporation of physical education as part of the definition was a strategy of Congress to assure the provision of physical education for all exceptional children.

3. Related services include those typically referred to in the public schools as *special services* or *support services*, plus *transportation*. Inclusion of transportation in this regard is important, because in many areas handicapped children must be transported in order to receive the available services.

   Reference is made to speech pathology, audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnosis and evaluation purposes only.
4. Included in the definition of handicapped children are the mentally retarded, hard of hearing, deaf, speech impaired, visually impaired, severely emotionally disturbed, orthopedically impaired, other health impaired, or specific learning disabilities needing special education and related services.
5. Two priorities are specified: serving handicapped children not presently receiving an education—defined as *first priority children;* and serving children with severe handicaps within any disability who are receiving inadequate education—*second priority children.* The conditions of the law apply to all handicapped children and youth, but the priorities pertain to expenditure of funds received by districts and states through appropriations governed by the law.
6. The law specifies a federal commitment to assume fiscal responsibility for up to 40 percent of the excess costs incurred in providing a free and appropriate public education for all handicapped children. This represents a significant commitment.
7. By 1980, all handicapped children between the ages of 3 and 21 must have available to them a free and appropriate public education.

The following discussion focuses on the special features of the law, including definitions, and on three major principles inherent in the law—protective safeguards, least restrictive alternatives, and the individualized education program requirement.

Protective Safeguards

Both PL 94-142 and PL 93-380 emphasize the establishment of protective safeguards. The intent is to ensure application of due process for the handicapped. In reading the description of protective safeguards, the requirements appear to be "legal" and highly specific. Reference is made to terms such as appeal, right to cross-examine, hearings, representation by counsel, and other terms typically applied in courts of law.

Many educators have had difficulty understanding the practical implications of these requirements, as well as the rationale for their inclusion in the law. Questions have been raised as to why the handicapped should be singled out with specific protective safeguards legislated for them, when the existing due process provision should apply to all students. An examination of how the handicapped historically have been treated, however, clearly indicates that previous protective safeguards have not been applied.

The handicapped represent a minority comprised of several subgroups. Although some of the subgroups have been effective in advocating their interests (e.g., the blind, the deaf), others have not. In some cases, such as the severely and profoundly handicapped, individuals who comprise the subgroups are not capable of representing themselves. These groups must depend upon others to advocate for them. Examples of circumstances which support the need for specific laws to provide protective safeguards for the handicapped include the following:

- Many handicapped children assigned to special programs have remained in those programs throughout their educational careers. This has been true particularly of students placed in special classes for the mildly mentally retarded. The tendency has been for special education placements to be considered permanent assignments rather than short-term options designed to enhance the individual's performance and, in turn, prepare the student for return to the regular class.
- Too often, decisions of placement eligibility have been made on the basis of insufficient information or on results of inappropriate tests. Many tests discriminate against the handicapped in that the norms are not appropriate or because the handicapping condition makes the student unable to perform the task required to demonstrate test performance.
- Children with severe and profound handicapping conditions routinely have been excluded from public schools. The only options available to them prior to passage of this legislation have been public or private institutions, remaining at home, or placement in the few community-based programs which have existed for this popula-

tion. The public schools do not have a history of providing services to the severely and profoundly handicapped.

- Disproportionate numbers of children from minority groups have been placed in special education programs because their functioning level in school may have approximated that of students receiving special education. Such placement practice has ignored the cultural and educational factors contributing to their low-functioning level.
- The circumstances of care and appropriateness of training for the handicapped in institutional settings have attracted widespread attention. Many institutions have been described as overcrowded, understaffed, lacking in programming opportunities, and insensitive to patient needs. These conditions relate in large part to the failure of public agencies to commit sufficient financial resources.

PL 94-142 sets forth specific procedures which districts must carry out to establish due process. The procedures appear to be reasonable and to reflect sound programming principles. Few people disagree with the intent. Most negative reactions relate to the practical consequences of implementation in terms of all handicapped children and youth. Briefly, the procedures state that:

1. Parents must be provided an opportunity to examine all records which pertain to the school's evaluation of their child and educational decisions by school personnel affecting their child. This requirement has major implications for testing practices and for recording student information. Personnel responsible for evaluation and report preparation must be careful to give information which is meaningful to parents as well as to professionals.
2. Parents may obtain evaluations from examiners independent of the school. This requirement places schools in the position of having to support their evaluations and possibly consider evaluation data which may be contrary to their own findings. Concern has been expressed that some parents who desire an independent evaluation may find the cost involved to be prohibitive. The law is not clear about what happens if parents or guardians cannot afford independent evaluation costs. Kotin and Eager (1977, p. 20), in discussing this procedure, indicate that most states provide notice of the right to an independent evaluation but are not specific on the issue of payment.
3. Surrogate parents must be appointed if the parents or guardian of the child are not known or available, or if the child is a ward of the state. This requirement has been in effect for some time in terms of institutionalized children who are wards of the state. The practice traditionally has been to name the superintendent of the institution as the surrogate parent. In view of the number of children involved and the administrative role of the superintendent, this practice has not been desirable.

   Under PL 94-142, this practice does not meet the intent of the law (Irvin, 1976, p. 9). Persons serving as surrogate parents cannot be employees of local districts or the state educational agency. Selection and training of persons to fill the surrogate parent role are important considerations in implementing this procedure.
4. Parents or guardians must receive written notice whenever the school proposes a change in the identification, evaluation, or educational placement of their handicapped child. The requirement also applies if the school refuses to initiate a requested change. Prior to passage of PL 94-142, most states did take steps to establish regulations regarding parent consent, but these steps did not go as far as the law now mandates.

   The notice must be in *written form* and in the parent's or guardian's *native language* unless this clearly is not feasible. Although many schools have followed the practice of notifying parents of placement decisions and, in some cases, evaluation, few have had experience in communicating with parents for whom English is not the primary language.
5. Parents or guardians must be provided an opportunity to present complaints in any matter relating to identification, evaluation, or educational placement of their child. Historically, parents and guardians have had the option of voicing concerns but, for the most part, they have communicated without knowing the most effective channel for expressing their views or the most appropriate source from which to seek information. Now, procedures for presenting complaints must be structured, and parents must be given information on procedures to follow.

If the due process procedures do not result in a program satisfactory to the parent or guardian, the law also allows for an impartial due process hearing. Hearings can be initiated by parents or by the school district. The hearing may be held by the local school district, an intermediate school district, or by the state educational agency, depending upon the state's laws.

Guidelines are provided on the role and selection of hearing officers, presentation of evidence, and representation by counsel. The hearing

officer cannot be an employee of the child's district. Parents also have the right to appeal the hearing decision; the first level of appeal is to the state educational agency. Guidelines on the appeal process are provided.

An optional provision involves pursuing civil action through the court judicial system. Some states have a mediation process prior to the formal hearing. The purpose is to resolve the conflict if possible without a formal hearing. When successful, the meditation process saves time and expenses.

The significance of the due process procedures established by PL 94-142 is related directly to implementation and enforcement by educational agencies. Extensive planning by school personnel is necessary to efficiently implement effective procedures. Considerable and thoughtful planning also is necessary to employ the procedures in a manner which invites parental participation as equals and which encourages a cooperative relationship rather than a competitive one.

If school personnel are responsive in their relationships with parents, and if parents can be convinced of the mutual concern for establishing the most appropriate program for the child, the due process procedures should be effective and the recourse to hearings and appeals rarely would be needed. The child's best interests are served when parents and school personnel cooperatively reach decisions, and this does not mean that school personnel are always right. It does mean that all parties should attempt to use the required procedures to effect the best decisions. School districts certainly could not afford the time, funds, or personnel resources if all educational decisions pertaining to handicapped children were appealed through due process hearings.

In summarizing an extensive national review of states' responses to due process requirements of PL 94-142, Kotin and Eager (1977) state:

> Another issue is whether the systems which are being adopted will provide for a sufficient equality in bargaining power between the school and the parents so the formal due process hearings will result in an accurate reflection of the merits of a case rather than a reflection of relative imbalance of power. For example, if a parent at a due process hearing is unrepresented by counsel, will the hearing be a dispute between equals? No states appear to be making any substantial effort to insure that the due process hearing is "fair" in the sense of having the opposing parties begin on an equal basis. Mere notice to the parent of the "right" to be represented is without significance unless the means to obtain counsel or an advocate is made available.
>
> A related issue is whether the due process systems being developed will be utilized by poor and minority group parents who, traditionally, have the greatest difficulty in participating in and securing the benefits of government programs. There is very little emphasis in any of the state systems on strong efforts to insure the participation of these parents in the special education process. Greater provision for early consultation with and personal notice to parents would remedy this omission to some degree (p. 10).

The operation of due process procedures for the handicapped is new to the schools, at least in the context of requirements detailed in PL 94-142. Although the proposed rules are explicit and the law is strongly worded, one reasonably should expect that a period of time will be necessary before consistent application of the procedures will be seen. School district personnel at all levels will need to learn their roles in the school's due process system. School personnel with responsibility for the handicapped must be totally knowledgeable about the school's policies and their specific responsibilities. The policies are required to be detailed by all districts in a written plan; thus, the plan should be available to all school personnel.

Least Restrictive Environments

A unique feature of PL 94-142 (and PL 93-380) is the *emphasis on the regular class as the preferred instructional base for all children.* In contrast to most sections of the law, which set forth procedures to follow, this section intends to establish a particular philosophy or orientation toward educational programming for handicapped children and youth. Historically, handicapped children were referred *out* of regular classes, and separate programs were established in an effort to meet their educational needs. The least restrictive environment section clearly is an attempt to reverse these policies and practices which have governed educational decisions regarding programs for handicapped children and youth in the United States.

PL 94-142 and PL 93-380 state that, to the maximum extent appropriate, handicapped children, including children in public and private facilities, are to be educated with children who are not handicapped. Both laws specifically state that special classes, separate schooling, or other removal of handicapped children from the regular educational environment should occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Although this is a strong and significant statement in terms of federal involvement in the organization of educational practices, it is not an independent effort to change dramatically what exists. The concept of the separate special class has been subjected to scrutiny since the 1930s (Pertch, 1936; Cowan, 1948; Blatt, 1958; and Goldstein, Moss & Jordan, 1965). Much has been written about the need to broaden the array of educational placement options available to handicapped children and youth. One of the more recent statements on this topic was by Dunn

(1968) in his classic article challenging the viability of the special class model. Since then, several proposed alternative models have appeared in the literature (cf. Deno, 1970; Birch, 1974; Beery, 1972; Chaffin, 1975).

The Council for Exceptional Children (CEC) conducted a survey in 1974 (prior to the legislation) which identified six states having laws that mandated placement according to the principle of least restrictive environment. An additional 10 states were providing authority for such practices through regulation. Of course, with passage of PL 94-142, all states now must comply.

Several different terms have been applied to the principle of least restrictive environment, including the *least restrictive alternative*. The most common of these terms has been *mainstreaming*. Because we are talking about a principle or philosophy which results in particular practices, rather than a set of procedures, interpretations of mainstreaming vary. Several elements, however, are common to most definitions: (1) assuming that a handicapped child can best be served through placement with nonhandicapped peers in regular class settings; (2) assigning primary instructional responsibility to regular class teachers; (3) providing support services to the regular class teacher as a means of helping the handicapped child when special assistance is required; (4) providing direct support services on a part-time basis to the handicapped child only if the regular class teacher is unable to provide an appropriate program through assistance from support personnel; (5) reserving assignment to special classes or separate programs as a last alternative; and (6) continually monitoring the child's progress, with the aim of returning the child to the regular class as soon as his or her performance suggests that such placement would be most appropriate.

Kaufman, Gottlieb, Agard, and Kukic (1975) offer the following definition of mainstreaming:

> Mainstreaming refers to the temporal, instructional, and social integration of eligible exceptional children with normal peers based on an ongoing, individually determined, educational planning programming process, and requires clarification of responsibility among regular and special education administrative, instructional, and supportive personnel (p. 35).

The primary merit of this definition is that it does not merely imply placement in regular classes. Instead, it stresses the importance of the child's current level of functioning, the child's capability for integration, and the needs for educational planning and clarification of responsibility. These are all important considerations in protecting the welfare of the handicapped individual.

A major implication of the least restrictive environment requirement for educators involves decisions pertaining to the moderately and severely handicapped. For example, how handicapped can a child be and still profit from placement, either full- or part-time, in a regular class? The law does not require all handicapped children to be placed in regular classes, but it places the "burden of proof" on the schools in justifying placement decisions in which the handicapped child is served outside the regular class. A district may decide that the most appropriate placement for a handicapped child is in a self-contained special class. In such a case, this district would claim that, for that particular child, the self-contained class is the least restrictive environment. This points out the decision school personnel must make when considering the needs of a handicapped child and available alternatives for services and educational programming. Chapter 2 discusses the historical context out of which the least restrictive environment concept has emerged.

The Individualized Education Program (IEP) Requirement

The section of PL 94-142 which has received the most support and at the same time caused the most concern is the requirement that an individualized education program (IEP) be developed and maintained for each handicapped child or youth. Support for the requirement focuses on the logic of instructional planning, and it follows that meeting the needs of students who present complex instructional problems requires detailed and systematic planning. The concern relates primarily to the lack of experience by school personnel in applying procedures suggested by the IEP requirement to large numbers of handicapped children and youth. This lack of experience has resulted in much speculation about the training of personnel to develop IEPs, the time required for their preparation, and the development of procedures to evaluate and monitor the IEPs.

Instructional planning, though, is not new to educators. Thus, one can reasonably anticipate that most districts will evolve systematic and efficient procedures in three or four years' time which will have a positive influence on instruction of the handicapped. To attain this level of performance, however, will require a major investment of effort by administrators, teachers, and support personnel.

Because this author strongly supports the concept of instructional planning as the most effective vehicle for improving instruction for the handicapped, a separate chapter has been included on instructional

planning. The IEP is presented (Chapter 3) in the context of a planning process and not merely a requirement of Public Law 94-142. This introduction, on the other hand, discusses IEP requirements in terms of educational and public policy implications.

The regulations of PL 94-142 are specific in describing what the IEP must include and the manner in which it must be developed; but, it does provide flexibility in formalizing implementation and monitoring procedures. The general requirement is that each state and local educational agency must ensure that an individualized education program is provided for each handicapped child designated for special education, regardless of what institution or agency will provide services for the child. If the regulations stopped at this point, most districts could comply merely by formalizing procedures they now employ to make placement decisions and to assess pupil performance. The influence of such a policy likely would not have much impact on improving instruction for the handicapped.

In an attempt to minimize the risk of such interpretations by public school personnel, however, the rules and regulations are extended by specifying requirements as to who participates in developing the IEP, the role of parents, and content requirements. Extension of the specific guidelines establishes the IEP as a precedent-setting requirement. This author was unable to identify any other federal education law which as precisely describes an educational practice or has the potential impact on instructional methods as the IEP requirement.

Because of the implications of the IEP for all school personnel, the sections of the regulations relating to participation and development of IEPs, parental participation, and content requirements will be reported, in Chapter 3, as printed in the *Federal Register* (August, 1977).

Although intended to influence instructional practices, the IEP requirement also must be perceived as a due process procedure. It can be argued that the IEP is the primary measure whereby the free and appropriate public education goal of PL 94-142 can be achieved. It provides a base of evidence upon which to make a determination of whether or not the handicapped child is being served appropriately. An examination of a child's IEP and the district's IEP procedures should clarify how instructional decisions are made, consequences of such decisions, and the specific impact of those decisions on the child's performance. Thus, in addition to being an instructional tool, the IEP becomes an accountability measure, or at least a source of data for accountability decisions.

Because the IEP process is governed by explicit guidelines, is expressed in written form, and includes evaluation procedures, some school personnel may perceive the IEP as a means for checking compliance with the law rather than as an instructional planning process to improve education for the handicapped. IEP contributions to accountability surely must be retained, but the focus should be on instructional benefits. Major efforts by principals, teachers, parents, and support personnel will be necessary to retain emphasis on the advantages of instructional planning and at the same time acknowledge the merits of accountability.

A significant long-range benefit of the IEP process will be the value derived from collecting information on student performance, in terms of long- and short-term objectives. The results should be a cumulative record of student performance based on application of instructional goals and objectives tailored to the needs of individual handicapped students. The data recorded should provide a perspective centering on curriculum and/or services, in contrast to past cumulative records which have been comprised primarily of test data and anecdotal comments. A secondary, but equally important, by-product of the process should be an increased awareness by all school personnel involved with the handicapped child as to the child's program, responses to the program, and progress patterns. The shift from placement to program concerns in itself could be the determining factor in improving instruction for the handicapped. Hopefully, all personnel will learn new skills and adjust certain behaviors as a result of their new roles in implementing the IEP requirement.

One area in which schools likely will encounter difficulty regards parent involvement in the instructional planning process. Historically, special education has elicited more parent-school personnel interaction than has regular education, but the interaction format has tended to center on placement decisions or parental requests for certain services. Such interactions often have been strained, because the school could not respond to parental requests or because parents were unwilling to agree to a placement decision advocated by school personnel.

In any event, school personnel generally have not had experience in working with parents in the context of the IEP requirement. Parents or guardians of handicapped children and youth have not been full partners in the instructional planning process, and they too lack experience in instructional planning. Since due process procedures strengthen the role of parents, districts must devise methods to involve parents in the planning process. Merely setting up procedures which comply with the law and thus allow for parental participation is not sufficient. Emphasis needs to be placed on establishing relationships which capitalize on parental involvement. Education of handicapped children is

not restricted to the classroom. It is a continuous and total process which can be enhanced greatly by parental involvement.

The IEP process provides not only the reason but also the vehicle for effective involvement of parents in the education of their children. The degree to which a district is successful in establishing relationships with parents depends on the district's investment in training personnel. To effect parental participation and to improve services for handicapped students, districts must train personnel to communicate to parents that their views are respected and their participation is welcome and needed. Teachers, particularly, must give more attention to ways in which the child's education can be extended into the home.

Through the IEP, PL 94-142 could have substantial impact on the education of all students. If individualized planning is effective in improving instruction for handicapped children and youth, one can reasonably speculate that these benefits could generalize across programs for nonhandicapped children and youth. The same argument could be made about parental involvement in instructional planning. In the future, parents of nonhandicapped students possibly could organize to broaden the application of the IEP proce s.

Assuming that the IEP achieves the goals set forth by PL 94-142, generalization of the process to the nonhandicapped may be restricted by practical implications of time and costs. On the other hand, practical restraints may be overcome by experience in implementing the requirement for the handicapped. If the IEP requirement is successful in establishing individualized planning as a common practice, it may prove to be exceedingly important to future generations of students.

PL 94-142 is far more comprehensive than indicated by the discussion presented here. It incorporates provisions which define roles of the federal government, state educational agencies, local educational agencies, and intermediate educational agencies. It includes directives on identification procedures, fiscal responsibilities, application to private agencies, and overall implementation processes. Readers preparing themselves for professional roles in education are encouraged to study the complete rules and regulations.

Section 504: The Rehabilitation Act of 1973

Because PL 93-380 and PL 94-142 are explicitly related to education of the handicapped, many educators have tended to perceive these pieces of legislation as representing the primary legislative resources in the movement toward improving education for exceptional children and youth. In the process, the significance of Section 504 of the Rehabilitation Act of 1973 may have been overlooked. This act provides a basic source of enforcement for the other two laws.

Section 504 is the first federal civil rights law which specifically protects the rights of the handicapped. The nondiscriminatory provisions of the law pertaining to the handicapped are almost identical to the nondiscriminatory provisions related to race which are included in Title VI of the Civil Rights Act of 1964 and to Title IX of the Education Amendments of 1972.

Originally, Section 504 was restricted primarily to employment, but in 1974 Public Law 93-516 was passed, amending Section 504 to cover a broader array of services for the handicapped. *Handicapped* was defined as follows:

> For purposes of Section 504 of the Act, a "handicapped individual" is defined as "any person who (A) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (B) has a record of such an impairment, or (C) is regarded as having such an impairment."

With this amendment, educational services were covered by the nondiscriminatory provisions of Section 504.

A major component of enforcement of PL 93-380 and PL 94-142 relates to the fiscal restraints imposed by Section 504 for noncompliance. Section 504 covers all services provided through agencies receiving federal financial assistance. This is explicit in the statement of purpose in Section 504:

> The purpose of this part is to effectuate Section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

The Rules and Regulations of Section 504 are similar to those for PL 94-142 in their comprehensiveness and detail. All educators, particularly those with administrative responsibilities, should familiarize themselves with the Rules and Regulations.

Martin (1977), in referring to Section 504 and PL 94-142, summarized the implications of the laws as follows:

> Read together, these two statutes and their implementing regulations require that by September 1, 1978, each handicapped child must be provided all services necessary to meet his/her special education and related needs (p.5).

Although legislation has given visibility in the sense of permanence to changes in education and in treatment of the handicapped, the

accomplishments of the 1970s have been possible only as an outgrowth of events occurring over the past 20 years. In addition to presenting a model of assessment procedures and service models, other significant issues have surfaced, including employment of nondiscriminatory testing procedures, effective placement practices, and a general movement toward establishing due process safeguards for the handicapped and their parents. While failures of the past have become issues of the present, these too must be studied in the context of an evolutionary process.

SERVICES

Central to the changes occurring during the 1970s have been the methods used in public schools to provide services to exceptional children and youth. When the special class was considered the primary means for delivering special education, placement decisions simply involved whether or not a student was eligible for special class placement. Today, the situation is significantly different. Not only do the new state and federal laws require compliance, but most local districts have realized the necessity to develop specific orientations or philosophies upon which to base the organization of their special education services.

For the most part, the major treatment form required by exceptional children is special instruction aimed at improving *academic, vocational,* or *social* performance. Some children, of course, do require other forms of assistance, such as speech or physical therapy, medical treatment, or some type of psychological counseling. Further, within the general realm of specialized instruction, a number of teaching methods, programs, approaches, curriculums, materials, and instructional technologies may be applied to modify instruction to an exceptional learner's specific needs.

Special education may be viewed from at least three primary perspectives: (1) determining the most appropriate instructional or curriculum program; (2) establishing the most accurate diagnostic base for programming; and (3) selecting the most efficient and economical administrative structure for delivering services. Obviously, the latter two relate to instruction; and instruction, to be effective, depends upon accurate diagnosis and effective administrative structures. After having reviewed a large number of public school programs over several years, however, this author believes that too many districts place primary emphasis on creating organizational structures which contribute to

DIGEST OF STATE AND FEDERAL LAWS: EDUCATION OF HANDICAPPED CHILDREN

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Law Digest: Education of Handicapped Children

FEDERAL LAWS

TITLE VI, ELEMENTARY AND SECONDARY EDUCATION ACT AMENDMENTS OF 1969 (P.L. 91-230) (as amended by P.L. 93-380, the Education Amendments of 1974)

Part A—General Provisions: Handicapped children are defined as "mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education and related services." (*Sec. 602*)

Children with specific learning disabilities are defined as "those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, or mental retardation, of emotional disturbance, or of environmental disadvantage." (*Sec. 602*)

A bureau for the education and training of the handicapped is established in the U.S. Office of Education, "which shall be the principal agency in the Office of Education for administering and carrying out programs and projects related to the education and training of the handicapped." (*Sec. 603*)

The Commissioner of Education is directed to establish within the U.S. Office of Education a National Advisory Committee on Handicapped Children. The 15-member committee shall review the administration and operation of programs authorized by the Education of the Handicapped Act and other programs within the Office of Education related to handicapped children. At least eight members of the committee shall be involved in the education and training of the handicapped. In addition, the committee makes recommendations for the improvement of programs for handicapped children. Each year the committee shall report its recommendations to the Commissioner. This report shall be routed to the Secretary of the Department of Health, Education, and Welfare, who will transmit the report, including his recommendations, to the Congress. (*Sec. 604*)

The Commissioner of Education is empowered to determine if any program authorized pursuant to this Title will be improved by permitting the funds authorized for such program to be used for the acquisition of necessary equipment and facilities. If, within 20 years after the completion of any construction for which funds under this Title have been paid and the facility ceases to be used for the purposes for which it was constructed, the U.S. government may recover, at current market value, the proportion of its original investment in the construction. (*Sec. 605*)

Part B–Assistance to States for Education of Handicapped Children: This part provides grants to aid states in the initiation, expansion, and improvement of programs at preschool, elementary, and secondary levels. Up to three percent of the amount appropriated each year for payments to the states may be allotted by the Commissioner of Education to the outlying areas and the Bureau of Indian Affairs schools. Allotments to the states are based on the number of children ages three to 21 in the state. A minimum allotment of $300,000 is provided to each state (615(a)(1) and 615(d) of P.L. 93-380.)

For fiscal 1975 only, P.L. 93-380 changed the funding formula to an entitlement based upon the number of all children within each state aged three to 21 multiplied by $8.75, subject to ratable reductions if appropriations do not equal full entitlements.

Each state establishes its own procedure for approval of project applications based upon state and federal regulations. In order to receive funds, each state must submit a state plan. The state plan for each fiscal year must meet the following requirements:

(1) Assurance must be given that funds will be expended only for the initiation, expansion, or improvement of programs and projects of sufficient size, scope, and quality to meet the needs of handicapped children. Indication of state involvement in the administration of the projects and procedures for planning at the state and local levels must be given. Planning and administration funds must not exceed $200,000

(2) A proportionate number of children in private elementary and secondary schools must participate in programs.

(3) Responsibility for the control of funds must be with a public agency.

(4) Funds under this section should increase or supplement state, local, and private funds rather than replace such funds.

Council for Exceptional Children. Digest of State and Federal Laws: Education of Handicapped Children. Nancy Bolick, Editor. 1979, pp. [illegible] through 52-14, 16-1 through 16-5. Reproduced by Permission

(5) Annual evaluations of programs should be conducted to insure that the educational needs of handicapped children are being met.

(6) No funds may be used for children eligible for assistance under P.L. 89-313.

(7) Dissemination of significant information derived from projects should be provided.

(8) All education programs for the handicapped in the state must be properly coordinated by those responsible for special education in the state education agency. (*Sec. 613*)

P.L. 93-380, the Education Amendments of 1974, mandates further state plan requirements as an addition to those just specified.

New state plan requirements effective fiscal 1975:

(1) *(Full Services Goal & Priority to Unserved)* Under new paragraph (12) of Section 613(a), the Part B State plan must "(A) establish a goal of providing full educational opportunities to all handicapped children, and (B) provide for a procedure to assure that funds expended under this part are used to accomplish the goal set forth in (A) of this paragraph and priority in the utilization of funds under this part will be given to handicapped children who are not receiving an education". (614(d))

(2) *(Evaluation-Placement Safeguards).* Under new paragraph (13) of (613(a), the Part B State plan must "provide procedures for insuring that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation and educational placement of handicapped children." These include, but are not limited to the following:

(a) (*Due Process Guarantees*) – (i) prior notice to parents or guardians when a change in the child's placement is proposed; (ii) opportunity for parents or guardians to obtain an impartial due process hearing, examine all relevant records, and obtain an independent evaluation of the child; (iii) protection of the child's rights when his parents or guardians are not known, available, or he is a State ward; and (iv) provision to insure that the due process decisions in (ii) are binding on all parties.

(b) (*"Least Restrictive"*) – Procedures to insure that, to the maximum extent appropriate, handicapped children are educated with children who are not handicapped and that their removal from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily.

(c) (*Non-Discriminatory Testing & Evaluation*) –Procedures to insure that testing materials and procedures used for classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. (614(d))

New state plan requirements effective fiscal 1976:

Under a new section 613(b), (P.L. 93-380), any state which desires to receive grants for any fiscal year beginning after June 30, 1975, must submit within one year following enactment of P.L. 93-380 (therefore, by August 21, 1975) an amendment to the Part B state plan. The amendment must set forth policies and procedures to assure the following:

1. *(Child Identification)* - - that all children in the State who are handicapped and in need of special educational and related services are identified, located and evaluated, including a practical method of determining which children are currently served and which are not currently served;
2. *(Confidentiality)* - - that policies and procedures will be established in accordance with detailed criteria prescribed by the Commissioner to protect the confidentiality of the above child data.
3. *(Full Services Goal)* - - that there is established (i) a goal of providing full educational opportunities to all handicapped children; (ii) a detailed time-table for accomplishing such a goal; and (iii) a description of the kind and number of facilities, personnel and services necessary throughout the State to meet such a goal; and
4. *(Public Notice)* - - that the State plan amendment under 613(b), will be available to parents and the general public at least 30 days prior to its submission to the U.S. Office of Education. (615(e)(1))

Part C–Centers and Service to Meet Special Needs of the Handicapped: The Commissioner of Education is authorized to make grants establishing regional resource centers to develop and apply models of appraising the special education needs of handicapped children and to serve as a resource to schools, agencies, and institutions. Centers also develop educational programs to meet the special education needs of the handicapped. Consultative services may be provided and include, when appropriate, consultation with parents or teachers of handicapped children. Periodic re-examination and re-evaluation of special education programs and other technical services are also functions of the centers. (*Sec. 621*)

Provision is made for the establishment of model centers for deaf-blind children. These centers are designed to develop and provide, as early as feasible in life, the specialized, comprehensive, professional,

and other services, methods, and aids found to be the most effective with deaf-blind children to enable them to develop to their full potential for adjustment to the world around them. These services may include: (1) diagnostic and evaluative services; (2) programs for adjustment, orientation, and education including all necessary professional services, and (3) consultative services for parents and teachers to enable them to understand and deal with the special problems of deaf-blind children.

Transportation may be provided to non-resident students and to parents needing access to the center.

Public or non-profit agencies, organizations, and institutions may apply for contracts to establish such centers. (*Sec. 622*)

The Commissioner of Education is authorized to establish experimental early childhood education programs for the handicapped. Programs approved by the Commissioner must show promise of promoting a comprehensive and strengthened approach to the special problems of these children. Programs are to be distributed geographically and between urban and rural areas. Programs offered under this section should be designed to facilitate intellectual, emotional, physical, mental, social, and language development, encourage parent participation, and acquaint the community with the problems and potentialities of young, handicapped children.

Provision must be made for coordination of these programs with any similar activities in the schools of the communities served. The federal payment cannot exceed 90 percent of the cost of development, operation or evaluation of early childhood programs. (*Sec. 623*)

The Commissioner of Education is authorized to provide, as part of any grant or contract under Part C or as a separate contract or grant to an agency, organization, or institution operating a center or providing services which fulfill the purposes of Part C, all or part of the cost of such activities as:

(1) Research on meeting the full range of special education needs of handicapped children.

(2) Developing or demonstrating new or improved methods contributing to the adjustment and of such children.

(3) Training professional and allied personnel engaged in such programs. Payment of stipends for trainees as well as travel and expense allowances for the trainee and his dependents are allowed.

(4) Dissemination of materials and information about effective practices.

The Commissioner is directed to conduct or contract for the conducting of evaluation of such program. (*Sec. 624*)

The Commissioner of Education is directed to conduct, either directly or by contract with independent organizations, a thorough and continuing evaluation of the effectiveness of each program assisted under Part C. (*Sec. 625*)

Part D—Training Personnel for the Education of the Handicapped: A training program for personnel for education of the handicapped is authorized. The Commissioner of Education may make grants to institutions of higher education and other appropriate nonprofit institutions to aid in the following:

(1) providing training of professional personnel to conduct training of teachers and other specialists in fields related to the education of the handicapped;

(2) providing training for personnel presently engaged or preparing to engage in employment as teachers of the handicapped, supervisors of such teachers, other personnel providing services for the education of handicapped children, or researchers in the fields related to such education; and

(3) establishing and maintaining scholarships with stipends and allowances determined by the Commissioner for training personnel in the categories listed above. (*Sec. 631*)

The Commissioner may make grants to state educational agencies to assist them in establishing and maintaining, directly or through grants to higher education institutions, programs for training teachers of the handicapped or supervisors of such teachers. These grants shall also be available to assist the institutions in meeting costs of training. (*Sec. 632*)

Grants may be made to public or non-profit private agencies, organizations, or institutions for projects to encourage students and professional personnel to work in the education of the handicapped by developing and distributing innovative materials to assist in recruitment or by publicizing available financial aid. Grants may also be made to disseminate information about available services for the handicapped and to provide referral services for parents, teachers, and other interested persons. (*Sec. 633*)

The Commissioner of Education is authorized to make grants to institutions of higher education, to provide training for personnel in physical education and recreation for the handicapped. The Commissioner is also authorized to make grants related to research or teaching in fields related to the physical education and recreation of the handicapped. (*Sec. 634*)

Yearly reports to the Commissioner are required of all recipients of training grants. (*Sec. 635*)

Part E--Research in the Education of the Handicapped: Grants for research and demonstration purposes may be made to state or local education agencies, institutions of higher education, and other public or nonprofit private education or research agencies or organizations. (*Sec. 641*)

These agencies are also eligible for grants and contracts for research and demonstration projects in physical education and recreation for handicapped children. (*Sec. 642*)

Panels of experts appointed by the Commissioner are required to advise him before making any grant under Part E of Title VI. (*Sec. 643*)

Part F--Instructional Medial for the Handicapped: The purpose is to provide captioned films for the deaf in both cultural and educational areas and the educational advancement of the handicapped through research, production, and distribution of educational media. The training of persons in the use of educational media for the instruction of the handicapped is also authorized. (*Sec. 651*)

The Commissioner is directed to establish a loan service of captioned films and educational media for the handicapped. Distribution of captioned films and other media and equipment may be done through state schools for the handicapped and other such agencies, which are determined to be appropriate local or regional distribution centers. (*Sec. 652*)

The Secretary of Health, Education, and Welfare is authorized to enter into agreement with an institution of higher education for the establishment and maintenance of a National Center on Educational Media and Materials for the Handicapped. The Center will provide a comprehensive program to facilitate the use of new educational technology including the design, development, and adaptation of instructional materials. The contract with the institution shall authorize the center, subject to the approval of the secretary, to contract with public and private agencies and organizations for demonstration projects and provide for an annual report of the activities of the Center to the U.S. Congress.

The secretary, in considering applications, shall give preference to institutions which demonstrate the necessary capabilities for the development and evaluation of educational media for the handicapped and meet the educational technology needs of the Model Secondary School for the Deaf established under P.L. 89-694. (*Sec. 653*)

Part G--Special Program for Children with Specific Learning Disabilities: A program is authorized supporting research training, and model centers to meet the needs of children with specific learning disabilities as defined in Part A, Section 602.

The Commissioner may make grants to or contracts with institutions of higher education, state and local education agencies, and other non-profit agencies and organizations to carry out the following program:

(1) research and related activities, surveys, and demonstrations;

(2) professional training for teachers of children with learning disabilities and supervisors and teachers of such personnel;

(3) establishing and operating model centers to provide educational evaluation to identify children with learning disabilities;

(4) developing and conducting model programs and assisting education agencies, organizations, and institutions in making model programs available.

Special consideration will be given to applications proposing innovative and creative approaches to meeting the educational needs of learning disabled children and those which emphasize prevention and early identification. The grants and contracts for the training of personnel should be distributed equitably on a geographic basis, and there should be, if possible, at least one model center in each state. (*Sec. 661*)

THE REHABILITATION ACT OF 1973 (P.L. 93-112)

This Act supersedes all of the Vocational Rehabilitation Act amendments dating back to P.L. 66-236. The Act establishes the statutory basis for the Rehabilitation Services Administration, and authorizes programs to:

(1) develop and implement comprehensive and continuing State plans for meeting the current and future needs for providing vocational rehabilitation services to handicapped individuals and to provide such services for the benefit of such individuals, serving first those with the most severe handicaps, so that they may prepare for and engage in gainful employment;

(2) evaluate the rehabilitation potential of handicapped individuals;

(3) conduct a study to develop methods of providing rehabilitation services to meet the current and future needs of handicapped individuals for whom a vocational goal is not possible or feasible so that they may improve their ability to live with greater independence and self-sufficiency;

(4) assist in the construction and improvement of rehabilitation facilities;
(5) develop new and innovative methods of applying the most advanced medical technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems and develop new and innovative methods of providing rehabilitation services to handicapped individuals through research, special projects, and demonstrations;
(6) initiate and expand services to groups of handicapped individuals (including those who are homebound or institutionalized) who have been underserved in the past;
(7) conduct various studies and experiments to focus on long neglected problem areas;
(8) promote and expand employment opportunities in the public and private sectors for handicapped individuals and to place such individuals in employment;
(9) establish client assistance pilot projects;
(10) provide assistance for the purpose of increasing the number of rehabilitation personnel and increasing their skills through training; and
(11) evaluate existing approaches to architectural and transportation barriers confronting handicapped individuals, develop new such approaches, enforce statutory and regulatory standards and requirements regarding barrier-free construction of public facilities and study and develop solutions to existing architectural and transportation barriers impeding handicapped individuals.

In provision of vocational rehabilitation services under Title I, an individualized written rehabilitation program is required in the case of each handicapped individual, to be developed jointly by the rehabilitation counselor and the handicapped individual, or his parent or guardian if appropriate. Such a written program shall set forth the terms and conditions as well as the rights and remedies under which goods and services will be provided to the individual (Section 102).

- Such written rehabilitation program shall be reviewed on an annual basis, at which time the individual will be given the opportunity to review and jointly redevelop the terms of the program.
- If evaluation of rehabilitation potential determines that the individual is not capable of achieving a vocational goal, such decision shall be reviewed annually.

Severe handicap is defined as "the disability which requires multiple services over an extended period of time and results from amputation, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, renal failure, respitory or pulmonary dysfunction, and any other disability specified by the Secretary in regulations he shall prescribe." (*Section 7*)

Provides in Part D of Title I for a study of need for services by individuals for whom a vocational goal is not feasible, but who can through provision of services, be assisted in living more normally in family and community.

Title II of the Act gives identity and emphasis to the research, demonstration, and training activities which were first authorized under the VR Act in 1954.

The Secretary, through the Commissioner, and in cooperation with other programs in DHEW, is authorized to make grants to and make contracts with States and public or nonprofit agencies and organizations, including institutions of higher education, to pay part of the costs of projects for the purpose of planning and conducting research, demonstrations, and related activities which bear directly on the development of methods, procedures, and devices to assist in the provision of vocational and comprehensive rehabilitation services to handicapped individuals, especially those with the most severe handicaps, under this Act.

The Rehabilitation Act of 1973 provides several other changes from the earlier Act:

- A new federal mortgage insurance program to assist in the construction of rehabilitation facilities with a limitation of $200 million on the value of insured mortgages.
- Establishment of an architectural and transportation barriers compliance board to enforce existing federal statutory requirements concerning access to public buildings and transportation for the handicapped.
- Requirement that state rehabilitation agencies seek funds from other existing federal assistance programs before any rehabilitation funds may be used for higher education purposes.
- Requirement that an annual report on the program be submitted to the President and the Congress. The report should specifically distinguish among rehabilitation case closures attributable to physical restoration, placement in competitive employment, extended or terminal employment in a sheltered workshop or rehabilitation facility, employment as a homemaker or unpaid family worker, and provision of other services.

- Requirement that the Secretary of HEW establish within his office a clearinghouse on information concerning programs for handicapped individuals. This office shall also be responsible for submitting a long range projection for the provision of comprehensive services to handicapped individuals and shall assist in meeting the goals and priorities set in the projected plan.
- Establishment of a federal interagency committee on handicapped employees to facilitate employment and advancement in federal government jobs for handicapped individuals.
- Prohibition of discrimination in any program or activity receiving federal financial assistance solely by be reason of handicap.
- Establishment of demonstration projects for client assistance to provide counselors to inform and advise clients of available benefits under the Act.

THE ECONOMIC OPPORTUNITY ACT AMENDMENTS OF 1972 (P.L. 92-424)

The Secretary of Health, Education, and Welfare is ordered to establish policies and procedures designed to assure that not less then ten percent of the total number of enrollment opportunities in the Nation in the Headstart program shall be available for handicapped children and that services shall be provided to meet their special needs. Effective July 1, 1975, a ten percent mandate must be in effect in *each* of the states.

The definition of handicapped children under this new preschool mandate is the same as that definition appearing in Section 602 of the Elementary and Secondary Education Act of 1965, as amended: "mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education and related services."

The Secretary is further ordered to implement his responsibilities under this mandate in such manner as not to exclude from any Headstart project any child who was participating in the program during the fiscal year ending June 30, 1972.

Within six months after the date of enactment of this Act, and at least annually thereafter, the Secretary is ordered to report to the Congress on the status of handicapped children in Headstart programs, including the number of children being served, their handicapped conditions, and the services being provided such children.

TITLE I, ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 (P.L. 89-10)

In recognition of the special educational needs of children of low income families and the impact that concentrations of low income families have on the ability of local educational agencies to support educational programs, the Title provides financial assistance to local educational agencies for the education of children of low income families. The improvement of educational programs in low income areas by various means, including preschool programs, is declared as policy. (*Sec. 101*)

Grants to expand and improve educational programs for children in institutions for the delinquent or neglected are made to state agencies and local educational agencies operating or supporting such institutions. Eligible institutions submit proposals in cooperation with state and local agencies such as health, welfare, education, or corrections agencies to the state educational agencies. The allocations for this program are formula based. (*Sec. 103*)

P.L. 89-313 amended this Title to provide grants to state agencies directly responsible for providing free public education for handicapped children. Students in state operated and supported institutions for the handicapped qualify for aid under the provisions set forth in this Title.

"In the case of a State agency which is directly responsible for providing free public education for handicapped children (including mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education), the maximum basic grant which that agency shall be eligible to receive under this part for any fiscal year shall be an amount equal to the Federal percentage of the average per pupil expenditure in that State or, if greater, in the United States multiplied by the number of such children in average daily attendance, as determined by the Commissioner, at schools for handicapped children operated or supported by that State agency, in the most recent fiscal year for which satisfactory data are available. Such State agency shall use payments under this part only for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of such children." (*Sec. 103*)

Payment to the states for handicapped children in state supported schools and institutions shall be the maximum grant as determined by the formula regardless of sums appropriated. (*Sec. 108*)

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P.L. 93-380, the Education Amendments of 1974, further amends this Title in the following way (*Section 121*):

"(c) A State agency shall use the payments made under this section only for programs and projects (including the acquisition of equipment and, when necessary, the construction of school facilities) which are designed to meet the special educational needs of such children, and the State agency shall provide assurances to the Commissioner that each such child in average daily attendance counted under subsection (b) will be provided with such a program commensurate with his special needs, during any fiscal year for which such payments are made.

"(d) In the case where such a child leaves an educational program for handicapped children operated or supported by the state agency in order to participate in such a program operated or supported by a local educational agency, such child shall be counted under subsection (b) if (1): he continues to receive an appropriately designed educational program; and (2) the State agency transfers to the local educational agency in whose program such child participates an amount equal to the sums received by such State agency under this section which are attributable to such child, to be used for the purposes set forth in subsection (c)."

TITLE III, ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, (P.L. 89-10) (As amended by P.L. 93-380)

The Commissioner of Education is directed to "carry out a program for making grants for supplementary educational centers and assist in the provision of vitally needed educational services not available in sufficient quantity or quality, and to stimulate and assist in the development and establishment of exemplary elementary and secondary school educational programs to serve as models for regular school programs." (*Sec. 301*)

Funds appropriated pursuant to Section 301 may be used for the following purposes:

(1) Planning which leads to the development of programs or projects designed to provide supplementary educational activities and services including pilot projects designed to test the effectiveness of plans.

(2) The establishment or expansion of exemplary and innovative educational programs including special programs for handicapped children.

(3) The establishment, maintenance, operation, and expansion of programs, including the lease or construction of necessary facilities and acquisition of equipment designed to enrich the programs of local elementary and secondary schools.

Supplementary educational services and activities is defined in the law to specifically include the following:

"(A) Comprehensive guidance and counseling, remedial instruction, and school health, physical education, recreation, psychological, social work, and other services designed to enable and encourage persons to enter, remain in, or re-enter educational programs, including the provision of special educational programs and study areas during periods when schools are not regularly in session.

"(B) Comprehensive academic services and, where appropriate, vocational guidance and counseling for continuing adult education.

"(C) Specialized instruction and equipment for students interested in studying advanced scientific subjects, foreign languages, and other academic subjects which are not taught in the local schools or which can be provided more effectively on a centralized basis, or for persons who are handicapped or of preschool age.

"(D) Making available modern educational equipment and specially qualified personnel, including artists and musicians, on a temporary basis for the benefit of children in public and other nonprofit schools, organizations, and institutions.

"(E) Developing, producing, and transmitting radio and television programs for classroom and other educational use.

"(F) In the case of any local educational agency which is making a reasonable tax effort but which is nevertheless unable to meet critical educational needs (including preschool education), because some or all of its schools are seriously overcrowded, obsolete, or unsafe, initiating and carrying out programs or projects designed to meet those needs, particularly those which will result in more effective use of existing facilities.

"(G) Providing special educational and related services for persons who are in or from rural areas or who are or have been otherwise isolated from normal educational opportunities, including where appropriate, the provision of mobile educational services and equipment, special home study courses, radio, television, and related forms of instruction, bilingual education methods, and visiting teachers' programs.

"(H) Encouraging community involvement in educational programs.

"(I) Other specially designed educational programs or projects which meet the purposes of this Title." (*Sec. 303*)

The states are required to establish an advisory council which shall include persons representative of "areas of professional competence dealing with children needing special education", set dates by which local education agencies must submit applications, and submit a state plan to the commissioner of Education. (*Sec. 305*)

"Not less than 15 per centum of the amount which such state receives to carry out the plan in such fiscal year shall be used for special programs or projects for the education of handicapped children." (*Sec. 305*)

The President is directed to appoint a National Advisory Council on Supplementary Centers and Services to review the administration of, general regulations for, and operation of this Title, and to evaluate programs carried out under this Title. Composition of the Council shall include "at least one person who has professional competence in the education of handicapped children". (*Sec. 309*)

P.L. 93-380, Part C—Educational Innovation and Support, Section 431, permits the states, with certain restrictions, to consolidate Title III (innovation portion only) with Title V of ESEA (strengthening state departments of education) and Title VIII of ESEA (dropout prevention and school health and nutrition programs).

The states must expend monies under this consolidation (with a state plan approved by the Commissioner) for the following broad purposes:

(1) for supplementary educational centers and services to stimulate and assist in the provision of vitally needed educational services (including preschool education, special education, compensatory education, vocational education, education of gifted and talented children, and dual enrollment programs) not available in sufficient quantity or quality, and to stimulate and assist in the development and establishment of exemplary elementary and secondary school programs (including the remodeling, lease, or construction of necessary facilities) to serve as models for regular school programs;

(2) for the support of demonstration projects by local educational agencies or private educational organizations designed to improve nutrition and health services in public and private elementary and secondary schools serving areas with high concentrations of children from low-income families and such projects may include payment of the cost of (A) coordinating nutrition and health service resources in the areas to be served by a project, (B) providing supplemental health, mental health, nutritional and food services to children from low-income families when the resources for such services available to the applicant from other sources are inadequate to meet the needs of such children, (C) nutrition and health programs designed to train professional and other school personnel to provide nutrition and health services in a manner which meets the needs of children from low-income families for such services, and (D) the evaluation of projects assisted with respect to their effectiveness in improving school nutrition and health services for such children;

(3) for strengthening the leadership resources of State and local educational agencies, and for assisting those agencies in the establishment and improvement of programs to identify and meet educational needs of States and of local school districts; and

(4) for making arrangements with local educational agencies for the carrying out by such agencies in schools which (A) are located in urban or rural areas, (B) have a high percentage of children from low-income families, and (C) have a high percentage of such children who do not complete their secondary school education, of demonstration projects involving the use of innovative methods, systems, materials, or programs, which show promise of reducing the number of such children who do not complete their secondary school education.

The 15 percentum set aside in Title III is extended to the entire consolidation (Section 403(a)(8)(B): "that not less than 15 per centum of the amount received pursuant to section 401(b) (the consolidation) in any fiscal year ... shall be used for special programs or projects for the education of children with specific learning disabilities and handicapped children, ..."

GALLAUDET COLLEGE (P.L. 83-420)

The Act changes the name of the Columbia Institution for the Instruction of the Deaf and Dumb and Blind, Incorporated, to Gallaudet College, located in Washington, D.C. It is a private, non-profit educational institution providing an undergraduate and graduate program for the deaf, a preparatory school for deaf students, a graduate school program in the field of deafness, and adult education for deaf persons. (*Sec. 2*) It operates the Kendall School for Deaf Children, a preschool program for very young deaf children, and programs in research on deafness.

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The Act defines the corporate powers of Gallaudet College and provides for its organization and administration. (*Sec. 6*) Gallaudet College "shall be under the direction and control of a Board of Directors, composed of thirteen members." (*Sec. 5*)

The Act authorizes the appropriation of such sums "as the Congress may determine necessary for the administration, operation, maintenance, and improvement of Gallaudet College, including sums necessary for student aid and research, for the acquisition of property, both real and personal, and for the construction of buildings, and other facilities for the use of said corporation." (*Sec. 8*)

MODEL SECONDARY SCHOOL FOR THE DEAF ACT (P.L. 89-694)

The Secretary of the Department of Health, Education, and Welfare is authorized to enter into an agreement with Gallaudet College to establish the Model Secondary School for the Deaf, serving primarily the residents of the District of Columbia and nearby states. The high school will provide a model for the development of similar programs across the country in formulating new educational methods, technology, and curriculums.

The Department of Health, Education, and Welfare agreement with Gallaudet shall: (1) provide for utilization of the National Advisory Committee on Education of the Deaf to advise Gallaudet on the establishment and operation of the model secondary school; (2) provide an annual report to the HEW Secretary; (3) provide excellence in architectural design in construction of any facilities along with innovative auditory and visual devices. (*Sec. 4*)

Such sums necessary for the establishment and operation, including construction and equipment, of a model secondary school "are authorized to be appropriated for each fiscal year." (*Sec. 2*)

NATIONAL TECHNICAL INSTITUTE FOR THE DEAF ACT OF 1965 (P.L. 89-36)

The Act authorizes the construction and operation of a residential facility for post secondary technical training and education for persons who are deaf in order to prepare them for successful employment. (*Sec. 2*) Preference will be given to the institute being located in a large metropolitan area having a wide variety of representative industries available for training experience (*Sec. 5*). The institute will be affiliated with a major university for the administration of its program. (*Sec. 4*) The governing body of the institution is required to make an annual report to the Secretary. (*Sec. 5*) (The National Technical Institute for the Deaf is located at Rochester Institute of Technology in Rochester, N.Y.)

VOCATIONAL EDUCATION AMENDMENTS OF 1968 (P.L. 90-576)

Title I–Vocational Education: The Vocational Education Act provides that ten percent of funds for vocational education must be spent for the handicapped. (*Sec. 122*) This program is designed to provide an effective vocational education program for the handicapped and to develop new programs relating to the vocational education needs of the handicapped. A National Advisory Council on Vocational Education is created and must have one member of the Council "experienced in the education and training of handicapped persons." State advisory councils on vocational education are also required to have a member "having special knowledge, experience, or qualifications with respect to the special educational needs of physically or mentally handicapped persons." Members are to be appointed by the elected state boards of education or by the governor. (*Sec. 104*)

The vocational education program operates through an approved state plan with 50 percent matching state funds. (*Sec. 103*)

Vocational education is defined in the following manner:

"The term 'vocational education' means vocational or technical training or retraining which is given in schools or classes (including field or laboratory work and remedial or related academic and technical instruction incident thereto) under public supervision and control or under contract with a State board or local educational agency and is conducted as part of a program designed to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations or to prepare individuals for enrollment in advanced technical education programs, but excluding any program to prepare individuals for employment in occupations which the Commissioner determines, and specifies by regulation, to be generally considered professional or which require a baccalaureate or higher degree; and such term includes vocational guidance and counseling (individually or through group instruction) in connection with such training or for the purpose of

facilitating occupational choices; instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training; job placement; the training of persons engaged as, or preparing to become, teachers in a vocational education program or preparing such teachers to meet special education needs of handicapped students; teachers, supervisors, or directors of such teachers while in such a training program; travel of students and vocational education personnel while engaged in a training program; and the acquisition, maintenance, and repair of instructional supplies, teaching aids, and equipment, but such term does not include the construction, acquisition, or initial equipment of buildings or the acquisition or rental of land. (*Sec. 108*)

HIGHER EDUCATION AMENDMENTS OF 1972 (P.L. 92-328)

The Commissioner of Education may make grants and contracts with institutions of higher education, including institutions with vocational and career educational programs, or a combination of such institutions, public and private organizations and agencies including professional and scholarly associations and, in exceptional cases, secondary schools and secondary vocational schools, to plan, develop and carry out services to assist youths from low income families with academic potential but who may lack adequate secondary school preparation or who may by physically handicapped to enter, continue, or resume postsecondary education. These programs include "Talent Search" to:

(1) identify qualified persons of financial or cultural need who have exceptional potential for secondary training and encourage them to complete secondary school and undertake such postsecondary training;

(2) publicize existing student financial aid; and

(3) encourage secondary or postsecondary dropouts of demonstrative aptitude to re-enter educational programs.

Also included is "Upward Bound" designed to generate skills and motivation necessary for postsecondary educational success. Participants in Upward Bound participate on a substantially full-time basis during all or part of the program.

"Special Services for Disadvantaged Students" provides remedial and other special services for students with academic potential enrolled in or accepted for enrollment at the institution which is the beneficiary of the grant or contract and who because of a deprived educational, cultural, or economic background, or a physical handicap needs these services to enable them to begin, continue or resume post secondary education.

Up to 75 percent of the costs of establishing and maintaining Educational Opportunity Centers are provdied to serve areas with major concentrations of low income populations by providing in cooperation with other applicable programs and services:

(1) information regarding financial and academic assistance;

(2) assistance to persons applying to postsecondary institutions, including preparing necessary applications; and

(3) counseling and tutorial services and any other necessary services to persons attending such institutions.

These centers will also serve as recruiting and counseling pools to coordinate resources and staff efforts of higher education and other postsecondary institutions in admitting educationally disadvantaged persons.

Persons participating on a substantially full-time basis participating in any of the above programs may receive a stipend of up to $30 monthly. (*Sec. 417B*)

Loans are provided to college and university students. Full forgiveness is authorized on loans made to students who later teach handicapped children "in a public or other nonprofit elementary or secondary school system." The rate of forgiveness is 15 percent for the first or second year of such service, 20 percent for the third or fourth year, and 30 percent for the fifth year. (*Sec. 465*)

Title V—Education Professions Development: The Act establishes a National Advisory Council (*Sec. 502*) and empowers the Commissioner of Education to make grants to or contract with state or local organizations to attract qualified persons into the field of education. (*Sec. 504*)

Fellowships leading to advanced degrees are authorized for teachers and related education personnel including persons in "child development and special education for handicapped children." (*Sec. 521*)

The Commissioner is authorized to make grants to institutions of higher education, state educational agencies, and local educational agencies to conduct programs or projects including the following activities:

(1) programs or projects to train or retrain teachers, or supervisors or trainers of teachers, in any subject generally taught in the schools;

(2) programs or projects to train or retrain other educational personnel in such fields as guidelines and counseling (including occupational counseling), school social work, child psychology, remedial speech and reading, child development, and educational media (including educational or instructional television or radio);

(3) programs or projects to train teacher aides and other non-professional educational personnel;

(4) programs or projects to provide training and preparation for persons participating in educational programs for children of preschool age;

(5) programs or projects to prepare teachers and other educational personnel to meet the special needs of the socially, culturally, and economically disadvantaged;

(6) programs or projects to prepare teachers and other educational personnel to meet the special needs of exceptionally gifted students;

(7) programs or projects to train or retrain persons engaging in programs of special education for the handicapped;

(8) programs or projects to train or retrain persons engaging in special educational programs for children of limited English-speaking ability;

(9) programs or projects to provide inservice and other training and preparation for school administrators, and

(10) programs or projects to prepare artists, craftsmen, scientists, artisans, or persons from other professions or vocations, or homemakers to teach or otherwise assist in programs or projects of education on a long-term, short-term, or part time basis. (*Sec. 531*)

Authorized grants or contracts may be used to pay the cost of short- or long-term institutes and other pre-service and in-service training programs designed to improve the qualifications of persons entering or re-entering elementary and secondary education or post-secondary vocational education. (*Sec. 531*)

Any state desiring to receive grants is required to submit a state plan through its educational agency. (*Sec. 520*)

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS (SAFA OR "IMPACT AID") P.L. 81-874 (AS AMENDED BY P.L. 93-380)

This is a longstanding federal education component, first authorized by the Eighty-First Congress. SAFA provides aid for the maintenance and operation of any of the Nation's school districts which have received the impact of the presence of federal installations. The original purpose was to reduce the inequities to local school districts brought about by the presence of federal lands which are tax-exempt coupled with that district's responsibility of providing an education to the dependents of federal employees, whether the dependents themselves live on federal property or whether their parents are simply in the federal employ, civilian and military.

In what is undoubtedly the closest approximation to general aid to education on the part of the federal government, payments are based on local education costs coupled with the number of federal dependents residing in a given local school district. Payments are made directly to the local school districts and may be expended for a relatively wide range of educational purposes.

Public Law 93-380 provides (Section 305(d)(C)) that, for the purpose of computing the amount to which a local educational system is entitled for any fiscal year under the impact aid program, the Commissioner shall count as one-and-one-half any child who is handicapped if that child is the dependent of a member of the U.S. Armed Services. Such child shall be counted only when the recipient local educational agency is in fact providing a program designed to meet the special educational and related needs of such child. Handicapped children are defined in the same manner as defined by Section 602(1) of P.L. 91-230, and children with specific learning disabilities are also eligible as defined by Section 602(15) of the same P.L. 91-230.

P.L. 93-380 more specifically provides that programs provided by local education agencies for eligible children must be of sufficient size, scope, and quality as to give reasonable promise of substantial progress toward meeting the special educational needs of such children. The determination of size, scope, and quality is based upon the individual state's standards for certification of such programs, and each state must in fact certify the particular programs.

ADULT EDUCATION (P.L. 91-230, TITLE III, AS AMENDED BY P.L. 93-380, TITLE VI, PART A, SECTION 603)

The Adult Education Act of 1966 was created to establish and expand programs of adult public education aimed at encouraging adults to complete their education through the secondary level. The Act is

more specifically aimed at helping adults prepare for more profitable employment and for more responsible citizenship. Due to constrained appropriations since the passage of the Act, funds have been focused on providing adult basic education programs for those who have not achieved the level of an eighth grade education. Grants are made to the states on the basis of an approved state plan.

Public Law 93-380 (Title VI, Part A, Section 603) amended the Adult Education Act in such manner as to provide that not more than 20 percent of the funds under the Act can be applied to educational programs for institutionalized persons. The legislative history accompanying this amendment defines "institutionalized adults" as "... those adults incarcerated in Federal, State and local penal institutions and those adults residing in Federal, State and local institutions for the mentally and physically handicapped."

DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES CONSTRUCTION AMENDMENTS OF 1970 (P.L. 91-517)

The Act amends the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (P.L. 88-164) to assist the states in developing a plan for the provision of comprehensive services to persons affected by mental retardation and other developmental disabilities originating in childhood, to assist the states in the provision of such services in accordance with such plan, and to assist in the construction of facilities to provide the services necessary to carry out such plans.

Title I, Services and Facilities for the Mentally Retarded and Persons with other Developmental Disabilities: Defines such disabilities as those attributable to mental retardation, cerebral palsy, epilepsy, or another neurological handicapping condition of an individual to which the following criteria apply: (1) the disability originates before such individual attains age 18; (2) the disability can be expected to continue indefinitely, and (3) the disability constitutes a substantial handicap to the individual.

The term "services" means specialized services or special adaptions of generic services directed toward the alleviation of a developmental disability and includes "diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training education, sheltered employment, recreation, counseling of the individual with such a disability, and with his family protective and other socio-legal services, information and referral services, follow-along services and transportation services." (*Sec. 140*)

The following grants are authorized:

"(1) Grants to assist the states in developing and implementing a comprehensive and continuing plan for meeting the current and future needs for services to persons with developmental disabilities.

"(2) Grants to assist public or non-profit private agencies in the construction of facilities for the provision of services to persons with developmental disabilities including facilites for any purpose stated in this section.

"(3) Grants for provision of service to persons with developmental disabilities including costs of operation, staffing and maintenance of facilities for persons with developmental disabilities.

"(4) Grants for state or local planning, administration, or technical assistance relating to services and facilities for persons with developmental disabilities.

"(5) Grants for training of specialized personnel needed for the provision of services for persons with developmental disabilities, or research related thereto.

"(6) Grants for developing or demonstrating new or improved techniques for the provision of services for persons with developmental disabilities." (*Sec. 130*)

A national advisory council is created to advise the Secretary of Health, Education, and Welfare and to evaluate the effectiveness of programs. Membership of the council will consist of 20 leaders in the fields of service to the mentally retarded and other developmentally disabled persons. (*Sec. 133*)

The formula grant program of the Act operates through two main mechanisms at the state level: (1) The State Planning and Advisory Council, and (2) designated state agencies.

Membership on the state advisory councils is to include representatives of each of the principal state agencies, local agencies, and nongovernmental organizations and groups concerned with services for the developmentally disabled.

At least nine specific programs must be taken into account: vocational rehabilitation, public assistance, social services, crippled children's services, education for the handicapped, medical assistance, maternal and child health, comprehensive health planning, and mental health. Provision in the state plan must include special financial and technical assistance for areas of urban and rural facility for persons with developmental disabilities. (*Sec. 134*)

Title II, Amendments to Part B of the Mental Retardation Facilities Construction Acts: A program is provided for federal support of inter-disciplinary training in institutions of higher learning as well as for the

construction of facilities to house these programs. Grants may be made to assist university affiliated facilities in the construction of special facilities capable of demonstrating exemplary care treatment, education, and rehabilitation of the developmentally disabled. These grants may cover the costs of administering and operating demonstration facilities and interdisciplinary training programs for personnel with developmental disabilities. (*Sec. 122*) Priority consideration will be given to projects involving junior college training programs. (*Sec. 203*)

Project grants to the states are authorized to assist in the construction of public or non-profit facilities to provide a wide array of services to the developmentally disabled. (*Sec. 201*)

TITLE V, SOCIAL SECURITY ACT OF 1935 AS AMENDED

This Title authorizes project grants and formula grants to the states to support such programs as maternal and child health services, crippled children's services, maternity and infant care projects, internal and child health research, and personnel training in maternal and child health.

The Title authorizes a program of formula grants to the states for services reducing infant mortality and improving the health of mothers and children. Geographical areas suffering severely from economic distress are to be given special consideration in the funding of programs. Some funds are used by the states to conduct special clinics for mentally retarded children and to provide diagnostic, counseling, treatment, and follow-up services. (*Sec. 503*)

A program of formula grants is also authorized to provide financial support to states, especially in areas suffering from economic distress, for medical and related services to crippled children and children suffering from conditions that lead to crippling. (*Sec. 504*)

The Title authorizes a program of project grants to help reduce the incidence of handicapping conditions associated with childbearing and to help reduce infant and maternal mortality. Grants are made to identify high-risk patients early in pregnancy and make available a broad spectrum of diagnostic and specialist consultation services including hospitalization during the prenatal period, labor, and delivery, and provision of intensive medical and nursing care for prematurely born and other high risk infants. Health and dental care projects for children and youth are also supported, particularly in areas where low income families are concentrated. (*Sec. 503*)

The Title authorizes a program of project grants to train personnel for health care and related services for mothers and children, particularly mentally retarded children and children with multiple handicaps, (*Sec. 511*) and a program of project grants authorized to support research projects relating to maternal and child health services or crippled children's services showing promise of substantial contribution to the advancement of such services. (*Sec. 512*)

The most recent amendments are contained in P.L. 92-603, the Social Security-Welfare Amendments of 1973.

AN ACT TO PROMOTE THE EDUCATION OF THE BLIND (1879)

The Act creates the American Printing House for the Blind, a non-profit institute located in Lexington, Ky., which supplies educational materials and tangible apparatus to blind and multi-handicapped children and adults.

The Act establishes a perpetual fund, the interest of which the Secretary of Health, Education, and Welfare is authorized to pay to the trustees of the Printing House on a semi-annual basis. (*Sec. 2*) The appropriation shall be expended by the trustees each year "in manufacturing and furnishing books and other materials specially adapted for the instruction of the blind." These materials "shall each year be distributed among all the public institutions in the states, territories, and possessions of the United States, the Commonwealth of Puerto Rico and the District of Columbia, in which blind pupils are educated." (*Sec. 3*)

The superintendent of each public institution for the education of the blind (or his designee) and the chief state school officer shall serve as ex-officio members of the board of trustees of the American Printing House for the Blind. (*Sec. 3*) The trustees are required to make an annual report to the Secretary of the Treasury. (*Sec. 4*)

ELIMINATION OF ARCHITECTURAL BARRIERS TO THE PHYSICALLY HANDICAPPED IN CERTAIN FEDERALLY FINANCED BUILDINGS (P.L. 90-480)

The purpose of this Act is to insure that certain buildings financed with federal funds are designed and constructed so as to be accessible to the physically handicapped. The term "building" as defined in the Act refers to any building or facility intended for public use, other than a privately owned residential structure or buildings on a military installation designed and constructed for able-bodied military personnel. (*Sec. 1*) Appropriate standards of design and construction will be developed by the Secretary of Health, Education, and Welfare in consultation with the administrator of General Services Administration, the Secretary of Housing and Urban Development, the Secretary of Defense. (*Sec. 2-4*) Every federally financed building designed, constructed, or altered after the effective date of standards issued under this Act must be in compliance with these standards. (*Sec. 5*)

The Administrator of General Services, Secretary of Defense, and Secretary of Housing and Urban Development are empowered to "waive any such standards on a case-by-case basis, upon application made by the head of the department, agency, or instrumentality of the United States concerned." Administrators and Secretaries are required to conduct "such surveys and investigations as they deem necessary to insure compliance with such standards." (*Sec. 6*)

EDUCATION OF THE GIFTED AND TALENTED (P.L. 93-380, Title IV, Section 404)

The Act provides for the establishment of: (1) an administrative unit in OE to coordinate the programs and activities for gifted and talented children provided for in the Act; and (2) a national clearinghouse to collect and disseminate information relative to the education of gifted and talented children. In addition, the Commissioner is authorized to transfer funds to NIE to conduct research relating to the education of gifted and talented children.

The Act provides for grants to SEAs and LEAs for the development, operation and improvement of programs and projects designed to meet the special educational needs of gifted and talented children at the preschool, elementary and secondary levels. Funds may be used for the acquisition of instructional equipment, for training programs and for model programs and projects. Funding of $12,250,000 is authorized for these programs, for each year through fiscal 1978.

KANSAS

RIGHT TO AN EDUCATION

Constitution: "The Legislature shall encourage the promotion of intellectual, moral, scientific, and agricultural improvement by establishing the uniform system of common schools and schools of a higher grade. . . " (*Art. VI Sec. 2, Kan. Const.*)

Compulsory Attendance Law: Children between the ages of seven and 16 who are physically or mentally unable to attend school are exempt from the compulsory attendance requirements.

If a school district has provided special education facilities for an exceptional child, it is the duty of the parent or guardian to enroll the child, unless a doctor's certificate is filed with the clerk of the school district, showing that it is inadvisable for the child to receive special education services. (*KSA 72-5339*)

All parents, guardians, or other persons having control of a deaf or blind child, otherwise physically and mentally qualified and between the ages of seven and 21, must send the child to some suitable school where the blind and deaf are educated until completion of a prescribed course of study or until the child has reached age 21. Deaf children will receive instruction conducted either manually or orally, or both, at least nine months in each year. (*KSA 72-5301*)

Responsibilities: The board of education of every school district shall provide special education services for all exceptional children in the school district. Such services must meet the State Board's standards and criteria, and must be planned and operative not later than July 1, 1979. (*Sec. 6, HB 1672, 1974*)

The governing bodies of all school districts shall establish approvable special education services for all developmentally disabled children. Such services shall be planned and operative not later than July 1, 1974. (*KSA 72-933*)

Subject to the due process provisions of HB 1672, 1974, no school district shall be required to keep an exceptional child in regular instruction when the child cannot materially benefit from the work of the regular classroom, nor to provide such exceptional child with special education services for exceptional children when it is determined that the children no longer benefit therefrom, or needs more specialized instruction. Provided, however, that nothing in this section shall be construed to deny a child access to the educational system and education or training appropriate to the child's abilities. (*Sec. 17, HB 1672, 1974*)

When a school district provides special education services for exceptional children as required by this Act, and a determination has been made in accordance with the due process provisions of this Act, that a child is an exceptional child and special education services are necessary for such child, it is the duty of such child's parent or guardian to require the child to enroll for and attend the special education services which are indicated by such determination. (*Sec. 18, HB 1672, 1974*)

POPULATION

Definitions: " 'Exceptional children' means persons who: (1) are of school age, according to the State Board rules and regulations (this age may differ from the compulsory school age); and (2) differ in physical, mental, social, emotional or educational characteristics to the extent that special education services are necessary to enable them to progress toward the maximum of their abilities or capacities." (*H.B. 1672 1974*)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: In order to obtain data necessary for review of the progress or lack of progress in special education services, it is the duty of the State Department of Education to conduct an annual survey of the school districts showing the total number of exceptional children within the various categories of exceptionality in the state. The state Crippled Children's Commission and other state agencies having census data on exceptional children shall from time to time as requested furnish such data to the Department (*Sec. 12, HB 1672, 1974*)

Special Education Evaluation: No child from a home in which English is not the principal language may be placed in a special program until he has been given, in his own language, examinations reasonably related to his cultural environment. (*Sec. 3, HB 1672, 1974*) See Planning

In accordance with rules and regulations which shall be adopted by every board, each child, or his parents or guardians, shall be afforded the right to a hearing before he is:

(1)excluded, reassigned, or transferred from regular school classes on the ground that he is an exceptional child and cannot materially benefit therefrom; or

(2)placed in, transferred to or from, or denied placement in special education services.

A written notice of a proposal to take any of the above actions must be given to the parents or guardians of the involved child. The notice must be mailed or personally delivered, and must:

(1)describe the proposed action;

(2)state the reasons for the proposed action;

(3)inform the parents or guardians of the right to object to the proposed action at a hearing which may be had, upon request of one of the parents or guardians, not less than 15 days nor more than 30 days from the date on which such notice is received.

No action with regard to the child's exclusion, reassignment or transfer may be taken within the time period (of at least ten days) given the parents or guardians to request a hearing, except with the parents' written consent. (*Sec. 13, HB 1672, 1974*)

The hearing, which must be closed unless the parents request otherwise, shall be held at a time and place reasonably convenient to the parents or guardians, and conducted in accordance with rules and regulations adopted by the school board. Such rules and regulations must provide procedural due process, including:

(1)the right of the child to have counsel of his own choice and to receive the advice of such counsel or other person whom he might select;

(2)the right of the child's parents or guardians to be present at the meeting;

(3)the right of the child and his counsel or advisor to hear or read a full report of the testimony of witnesses responsible for recommending the proposed action and any other material witness;

(4)the right of the child to present his own witnesses in person or their testimony by affidavit, including expert medical, psychological or educational testimony;

(5)the right of the child to testify in his own behalf and give reasons in opposition to the proposed action;

(6)the right of the child to have an orderly hearing; and

(7)the right of the child to a fair and impartial decision based on substantial evidence.

The person or persons who conduct the hearing must be certified employees, but shall not be the same person or persons responsible for recommending the proposed action upon which the hearing is based.

At a reasonable time prior to the hearing, the parents or guardians or counsel of the involved child shall be given access to all records, tests, reports or clinical evaluations relating to the proposed action. (*Sec. 14, HB 1672, 1974*)

Within 24 hours after a hearing excluding an exceptional child from regular classes, a written notice of the result shall be sent by registered mail to the child involved, his parents, guardian or counsel. The result may be appealed up to ten days later by filing intention with the clerk of the Board. Within 20 days after filing, the appeal shall be heard by the Board or its appointed hearing officer. The parties involved will be notified five days prior to the hearing. The Board of Education will decide on the appeal not later than five days after the conclusion of the appeal hearing. (*Sec. 15, HB 1672, 1974*)

ADMINISTRATIVE RESPONSIBILITY

Administrative Responsibility: In order to comply with the special education law, each school district has the authority to:

(1)establish and organize approvable special education services for exceptional children within its school;

(2)provide for approvable special education services in the home, hospital or other facility;

(3)contract with any school district for special education services, subject to the State Board's approval;

(4)enter into cooperative agreements with one or more school districts for special education services, subject to the State Board's approval;

(5)contract with any accredited private nonprofit corporation or any public or private institution within or without the state, which has proper special education services for exceptional children, subject to the State Board's approval;

(6)provide transportation for resident and nonresident exceptional children to and from special education services attended, or provide all or part of the cost of room and board at the place where the special education services are located.

Special education services which are provided by school districts for exceptional children must meet standards set by the State Board in accordance with the state plan and are subject to the State Board's approval. Any contract entered into by a board under the provisions of this section may be changed or terminated by the legislature. (*Sec. 8, HB 1672, 1974*)

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The State Board may adopt rules and regulations for the administration of this Act and is responsible for adopting, amending, and administering the state plan. Such rules and regulations except for emergency rules and regulations, are to have the force and effect of law unless modified by the Legislature in a bill or joint resolution. (*Sec. 3, HB 1672, 1974*)

The State Board of Social Welfare is responsible for the State School for the Emotionally Disturbed. (*KSA 76-1701B*)

The state schools for the mentally retarded are under the jurisdiction of the Department of Institutions. (*KSA 76-1407*)

The State School for the Education for the Deaf and the State School for the Blind are under the supervision of the State Board of Education. (*KSA 76-1001*)

PLANNING

"State plan" means the state plan for special education services authorized by this Act. (*Sec. 2, HB 1672, 1974*)

The state plan shall include:

(1)a statement of the objectives of state supervision of special education services in school districts and state institutions;

(2)provisions for the establishment, maintenance, and supervision of special education services in school districts and state institutions;

(3)prescribed courses of study and curricula necessary to meet requirements for approval of special education services;

(4)criteria for screening, diagnosis and certification of exceptional children including physical, educational and psychological examinations;

(5)definitions of the various categories of exceptionality;

(6)implementation dates of special education services for the various categories of exceptionality;

(7)standards for special education services to be received by each of the categories of exceptional children. (*Sec. 3, HB 1672, 1974*)

A State Advisory Council for Special Education is established, to consist of nine members to be appointed by the State Board of Education immediately upon the taking effect of this Act. Each appointment is to be for a fixed term of not more than three years. The terms of office of the original appointees are to be staggered so that an equal number of members is appointed each year after the original appointments. Members shall be representative of persons and community organizations interested in exceptional children, professions related to the educational needs of exceptional children, local school districts, state institutions of higher education, and state institutions.

The State Advisory Council for Special Education shall:

(1)Advise and consult with the State Board in the preparation and administration of the state plan and in the formulation and review of rules and regulations adopted pursuant to this Act.

(2)consider any problems presented to it by the State Board and give advice concerning such problems, and

(3)make recommendations to the State Board concerning special education services and perform other duties as specified by law.

Members of the State Advisory Council for Special Education shall be paid compensation, subsistence allowances, mileage and other expenses as provided by law.

The advisory council shall elect a chairman and a vice chairman. The person in the Department specified under directions of the State Board to be the principal administrator of special education services shall be the secretary of the advisory council. The adivosry council is to meet as often as may be necessary to fulfill its prescribed duties. (*Sec. 4 HB 1672, 1974*)

A Coordinating Council for Handicapped Children is established to coordinate programs for all handicapped children under age 21. The council is responsible for maintaining a directory of services available for the handicapped in Kansas; distributing information to parents, doctors, and other persons concerning these services; initiating coordinated planning by and between agencies and departments, private associations, organizations, and corporations; maintaining records and information concerning handicapping conditions; and recommending to public and private agencies working with the handicapped the need for additional services. The council's membership consists of the director of special education, a representative of the Crippled Children's Commission, the director of the Division of Maternal and Child Health of the State Department of Health, the director of Child Welfare Services of the State Department of Social

Welfare, the coordinator of children's services of the Division of Institutional Management of the State Department of Social Welfare, the director of the State Division of Vocational Rehabilitation of the State Department of Social Welfare, the director of the Division of Services for the Blind of the State Department of Social Welfare, the superintendent of the State School for the Deaf, the principal of the State School for the Visually Handicapped, a representative of the Kansas University rehabilitation unit of the Medical Center, a representative of the Kansas Association for Mental Health, a representative of the Kansas Cerebral Palsy Association, a representative of the Kansas Association for Retarded Children and a representative of the Kansas Council for Children and Youth. By November 30 of each year, the council will submit a written report of its activities, studies, and proposals to the governor. Copies of the reports will also be given to all agencies and organizations having membership on the Council and the proper committees of the Legislature. (*KSA 74-6301-6*)

A Coordinating Council for the Blind has the same purposes relating to the blind as the Council for the Handicapped has for all handicapped children. (*KSA 74-4801*)

FINANCE

In each school year, in accordance with appropriations for special education services provided under this Act, each school district which has provided special education services in compliance with the requirements of the state plan and the provisions of this Act, shall be entitled to receive:

(1) reimbursement for actual travel allowances paid to special teachers at a rate not to exceed that specified in K.S.A. Supp. 3203 for each mile actually traveled during the school year in connection with teaching duties in providing special education services for exceptional children. Such reimbursement is also not to exceed $600 per special teacher per school year;

(2) reimbursement of 80% of actual travel expenses incurred for providing transportation for exceptional children to special education services, not to exceed $600 per exceptional child per school year, not to be paid if the child has been counted in calculating the state transportation aid received by the district under general education provisions;

(3) reimbursement of 80% of the actual expenses incurred for the maintenance of an exceptional child away from home for the purpose of providing special education services, not to exceed $600 per exceptional child per school year;

(4) after subtracting the amounts of reimbursement in subsections (1), (2) and (3) above from the total appropriation for special education services under this Act, a proportionate share of the remaining amount based upon the number of full-time equivalent special education teachers employed by the district as a percentage of such teachers employed in the state. For the purposes of this subsection, each professional is counted as one-half full-time equivalent special teacher. Special teachers in excess of the number necessary to comply with the special teacher/exceptional children ratio authorized by the State Board for the school district will not be counted in making computations under this section. (*Sec. 19, HB 1672, 1974*)

Payments will be made in a manner to be determined by the State Board, which will distribute funds as soon as it deems practicable and notify districts of any overpayments. If any district is paid more than it is entitled to receive under this Act, and fails to remit such overpayment to the state treasurer, the State Board may deduct this amount from any future payments becoming due to the district.

If a district is paid less than the amount of its entitlement, the State Board must pay the additional amount due at any time during the school year in which the underpayment was made or within 60 days after the end of such school year. (*Sec. 20, HB 1672, 1974*)

The State Board shall be responsible for the distribution and allocation of state and federal funds for special education in accordance with appropriation acts and the state statutes. (*Sec. 5, HB 1672, 1974*)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

See Administrative Responsibility.

SERVICES

"Special education services" means programs for which specialized training, instruction, programming techniques, facilities and equipment may be needed for the education of exceptional children. (*Sec. 2g, HB 1672, 1974*)

See Administrative Responsibility.

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PRIVATE

See Administrative Responsibility.

PERSONNEL

"Special teacher" means a person employed by a school district for special education services who is: (1) a teacher qualified to instruct exceptional children as determined by the State Board and who is so certified by the State Board; (2) a paraprofessional qualified to assist certificated teachers in the instruction of exceptional children as determined by standards by the State Board and who is so approved by the State Board. (*Sec. 2h, HB 1672, 1974*)

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

PROCEDURAL RESPONSIBILITIES
SCREENING, EVALUATION, PLACEMENT AND REVIEW PROCEDURES

INTRODUCTORY STATEMENT

Kansas legislation charges the State Board of Education with responsibility for establishing *criteria for screening, diagnosis and certification of exceptional children including physical, educational, and psychological examinations* (K.S.A. 72-963). Kansas schools are required to provide basic vision and hearing screening without charge to every pupil (K.S.A. 72-5205 and K.S.A. 72-1205). The following policies and procedures have been adopted by the State Board of Education in order that all exceptional children in the state may be located, evaluated, identified, and provided appropriate special education programming. These policies and procedures are compatible with the requirements of the Education of the Handicapped Act as amended by P.L. 93-380 and P.L. 94-142 and Section 504 of the Rehabilitation Act of 1973.

LOCAL EDUCATION AGENCY RESPONSIBILITIES

To provide appropriate educational programs for all exceptional children, local education agencies are responsible for the following:

1. Systematic screening procedures;
2. Comprehensive and non-discriminatory evaluation/diagnosis and identification/certification;
3. The development of an individualized education program which ensures placement of the child in an appropriate service model and specifies the objectives, implementation, and evaluation of the child's educational program; and
4. The provision of periodic review and readjustment of the child's program.

CRITERIA FOR SCREENING/DIAGNOSIS

Screening is the first step in the identification of exceptional children, but it is not a special education action. Screening procedures consider all children in a given population in order to locate those who may be in need of special education services. Because all children participate in screening activities, prior written parental consent is not required. No child shall be placed in any special education program solely on the basis of screening activities.

Each local education agency shall implement systematic procedures to screen all school-age children for learning assets or deficits which may require special education services. These screening procedures shall include the following:

1. Mandatory hearing and vision screening;
2. An age appropriate developmental instrument or screening procedure designed to identify those children with possible physical, intellectual, social or emotional deviations which may influence his/her learning; and
3. Any other instruments/procedures needed to supplement the above. Such instruments/procedures may include
   - teacher and parent referrals or self-referral by students,
   - behavioral checklists,
   - group achievement and/or intelligence tests,
   - adaptive behavior observations,
   - teacher/parent observation, and
   - other techniques developed locally by multidisciplinary efforts.

Preschool screening is recommended and should be initiated whenever possible.

CRITERIA FOR EVALUATION/DIAGNOSIS

Due Process in Preplacement Evaluation Procedures

The evaluation which is conducted to determine eligibility for special education and to provide the basis for developing an individualized education program is a special education action. Steps to initiate a comprehensive evaluation shall be made whenever screening, referral, or lack of progress indicates that a child may be exceptional as defined by K.S.A. 1974 Supp. 72-962. No child shall be placed in special education prior to the completion of an individual evaluation of his/her special needs. The preplacement evaluation may not be initiated without affording the child and his/her parents due process. Due process also is afforded the child and his/her parents if the school denies their request for a comprehensive evaluation. Prior written notification of the schools proposed action and proper steps to obtain parental consent to that action shall be taken. (See PROCEDURAL DUE PROCESS section)

Requirement for Evaluation Procedures

It is the intent of State and Federal law to ensure that children are not misclassified as exceptional because of inappropriate selection, administration, or interpretation of evaluation materials. Toward that end any preplacement evaluation and any subsequent reevaluation shall meet the following requirements:

1. All evaluation procedures shall be non-discriminatory in compliance with State and Federal laws. K.S.A. 72-963 and P.L. 94-142 explicitly state that no child may be assigned to or denied special education services prior to the administration of evaluation instruments which are given in the mode of communication best understood by the child and reasonably related to his/her racial or cultural environment.
   a. When a child is from a home in which English is not the principal language, the local education agency shall determine the language best understood by the child. If the child's preferred language is not English, the school may:
      - Use a qualified evaluator fluent in both the child's primary language and in English. This is the preferred alternative.
      - Use an interpreter to assist the evaluator and child with language and testing.
      - Select test instruments which lessen cultural factors and do not stress spoken language.
      - Use diagnostic prescriptive techniques.

      In those cases in which appropriate measures and/or qualified interpreters are not available, no formal assessment shall be made until the child has acquired sufficient familiarity with the language and culture of the school.
   b. If a child has sensory, motor, or speaking impairments, test results shall accurately assess whatever factor the test purports to measure rather than reflect the child's impaired communication skills. Tests which purport to measure communication skills may be used for this purpose. The following suggestions are for evaluating children with communication impairments:
      - Use of non-language performance scales standardized on or adapted for the area of exceptionality involved;
      - Visual communication techniques in place of, or in addition to, auditory techniques;
      - Auditory communication techniques in addition to large print or transcribed braille tests; and
      - An aide who is skilled in finger signing or total communication to assist the evaluator.
2. The evaluation shall be multidisciplinary, that is, conducted by a team of professionals qualified to assess the suspected area(s) of exceptionality. Input from

parents and other appropriate non-school personnel shall be sought to obtain a comprehensive view of the child.

3. For children suspected of having specific learning disabilities, the multidisciplinary team must include the child's regular teacher or a person qualified to teach a child of that age. Observations must be made of the child's performance in an age-appropriate learning environment. A written report of the results of the evaluation must be prepared and signed by all team members (see SPECIFIC LEARNING DISABILITIES section).

4. The evaluation shall be multisourced, that is, based upon a variety of assessment procedures appropriate to the exceptionality manifested. (See each program area section.) The intensity and type of evaluation shall be determined by the nature of the child's strengths and weaknesses. A child shall not be placed in special education on the basis of a single measure or procedure. In all cases, consideration shall be given to:

   — the child's developmental, psychological, social, and educational functioning;
   — his/her physical health or sensory impairment which may influence learning; and
   — the classroom and school learning climate.

   Informal measures may be used to obtain information about the child's current level of functioning, but placement decisions shall be based solely upon tests and other evaluation procedures which have been validated for the purpose for which they are used. Such tests shall be administered by trained personnel in conformance with instructions provided by their producer.

5. Any test used as a part of the evaluation shall be administered by a professional holding current certification or licensure to administer and interpret such test.

   Public school psychological evaluations shall be carried out only by an approved school psychologist certified by the Kansas State Department of Education or by an appropriately trained psychologist certified by the Kansas State Board of Examiners and reported to the Kansas State Department of Education.

   When interns or practicum students are in training, evaluations carried out by these students may be used for placement decisions if reviewed and signed by the supervising professional. Responsibility for the validity and reliability of any test results obtained by students and used to make placement decisions shall be with the supervising professional.

6. The special education administrator of the local education agency shall certify that each child approved for special education placement has had an appropriate and complete evaluation as described above.

   An exception to this requirement shall be made for children who have a speech impairment as their only apparent exceptionality. A qualified speech/language clinician shall evaluate each such child, using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders. The speech/language clinician shall verify the absence of learning or behavioral problems through examination of the child's records and/or conferences with parent(s) and teacher(s). If referral for additional evaluation by other professionals is not indicated, the comprehensive examination shall then be considered to be complete.

7. After the completion of the comprehensive evaluation one or more staffing conferences shall be held to determine the evaluation team's recommendations relative to special education programming for the child. The staffing shall include input from those persons who participated in the evaluation. In addition, any persons who are directly or indirectly involved in, or who may influence the child's educational success, shall have the opportunity for input to the staffing. The opinions and concerns of the child's parents shall be presented (either personally or by a school staff

member) as a significant part of the available information. Whenever possible, parents should participate in the staffing conference. The intent of this requirement is that all persons having information about the child's current level of functioning meet to jointly formulate recommendations for the child's educational program. In no cases shall special education placement recommendations or decisions be made solely by one person, even though this person may have considered the data collected by all members of the evaluation team.

INDIVIDUALIZED EDUCATION PROGRAM

If it is determined as a result of the evaluation that a child is in need of special education services, an individualized education program (IEP) shall be developed. The individualized education program is a written statement of the special education and ancillary services needed by a child based on his/her current level of functioning. It assigns responsibility for the delivery of these services, sets forth the anticipated changes in the child's behavior, and describes how these changes will be measured. Parents and, when feasible, the child must be given opportunity for active participation in its formulation. The IEP shall be developed prior to the initiation of any special education programming.

Participants in Development

The IEP shall be written (and subsequently reviewed/revised annually) in a meeting which includes:

1. A representative(s) of the local education agency, other than the child's teacher(s), who is qualified to provide, or supervise the provision of, special education. For a child who has been evaluated for the first time, this person shall have participated in the staffing conference and be qualified to interpret the written findings of the comprehensive evaluation to the parents. It is recommended that the local education agency be represented by a person who is authorized to make administrative decisions relative to the services to be provided.
2. The child's teacher(s).
   a. For a child who is receiving special education, the teacher shall be the special education teacher with primary responsibility for implementing the child's IEP. If the child's primary handicap is a speech/language impairment, the teacher shall be the speech/language clinician.
   b. For a handicapped child who is being considered for placement in special education, the teacher shall be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.
   c. If the child is not in school or has more than one teacher, the local education agency shall designate which teacher will participate in the meeting.
   d. Either the teacher or the agency representative should be qualified in the area of the child's suspected exceptionality.
3. One or both of the child's parents and, where appropriate, the child.
4. Other individuals at the discretion of the parents or the school.

Parents shall be notified of the meeting early enough to ensure that they will have the opportunity to participate in developing the individualized education program. The notice shall indicate the purpose, time, and location of the meeting and who will be in attendance. A reasonable attempt shall be made to schedule the meeting at a mutually agreed on time and place. Provision for interpreters or other facilitators shall be made for parents who are deaf or whose native language is other than English.

If neither parent can attend, individual or conference telephone calls may be used to obtain parental participation. If the school is unable to obtain parental participation, the IEP

meeting may be conducted without a parent. In such cases, the school shall document its attempts to arrange the meeting, including records of telephone calls made or attempted, copies of correspondence, and records of home visits. Parents shall be provided a copy of the IEP document upon request.

The IEP may be written in the staffing conference which culminates the comprehensive evaluation provided that:

1. Parents have been properly notified of this intent and given opportunity to participate, and
2. The legally required participants, as specified above, are in attendance.

Content of the Individualized Education Program

The individualized education program formalizes the process of designing instructional experiences for a child based on that child's specific needs as identified through a comprehensive evaluation. The IEP is a management document, a written statement of decisions about the objectives, content, implementation, and evaluation of special education services for an exceptional child. The intent of the law describing the content of the written IEP (Section 602 of P.L. 94-142) is to assure appropriate and individualized programming, rather than to produce a legally correct piece of paper. Therefore, both the required components and the recommended procedures for developing each component are given.

CONTENT	*PROCESS*
The individualized education program shall include the following:	
1. A statement of the child's present level of educational performance, including where applicable, academic achievement, social adaptation, and prevocational skills, sensory and motor skills, self-help skills, and speech and language skills.	1. For a child entering a special education program for the first time the statement of present level of educational performance should summarize the results of the comprehensive evaluation. When an IEP is being reviewed, the previous level of performance should be updated based upon current formal and informal evaluation of pupil progress. The statement should provide a profile of deficits and strengths from which instructional needs can be identified and prioritized. On the basis of the child's current level of performance, areas needing special assistance or intervention should be delineated. At this point the child's needs are not stated in terms of specific special education services, but rather in terms of priority instructional or curricular emphases. The decision as to how, where, and by whom services will be delivered may not be made prior to the time an appropriate educational program is designed.
2. A statement of annual goals which describe the educational performance anticipated within a year's time.	2. The IEP is not intended to provide daily lesson plans. Annual goals are written to give program direction to those persons who will be implementing the IEP. Each goal written should be directly related to some aspect of the child's current perfor-

	mance which, in the opinion of the conference participants, requires some type of special intervention. The entire curriculum need not be addressed. Annual goals must be measurable, but are broad in scope. They should focus on a group or cluster of skills in one instructional area (such as vocational, social, motor, communication, academic). The number of goals written will depend upon the type and degree of the child's exceptionality. When prioritizing the annual goals, consideration should be given to the student's functioning within the least restrictive environment.
3. A statement of short-term objectives which are measurable intermediate steps between the present level of performance and the annual goals.	3. The purpose of the short-term objectives which must be written for each annual goal is to provide progress check points for the IEP implementer(s). The objectives should be sequential and measurable. They serve as a guide from which lesson plans may be developed.
4. Objective criteria, evaluation procedures, and data collection schedules for determining, at least every twelve weeks, whether the short-term objectives are being achieved.	4. The IEP document must show how and when pupil progress toward stated objectives will be measured. It is recommended that indices of progress (or lack thereof) also be recorded on the IEP. If goals and objectives have been set too high or too low, they should be revised. The school may not be held responsible if a child does not achieve the growth projected in the annual goals or short-term objectives.
5. A statement of the specific special education and related services needed by the child without regard to the availability of such services. Any unique instructional media not ordinarily available to all students, but needed by the child for learning, shall be listed. For example, large print materials, braillers, amplification equipment, and non-oral communication devices should be listed; textbooks, kits, and manipulative materials for acquiring mathematical concepts should not be included.	5. The decision as to the type and amount of special education services must be based on the needs of the child under consideration. The intent of the IEP process is to design a program for a child, not to fit a child into an existing program. Local education agencies are legally bound to provide the services delineated in the IEP. If, at the time the IEP is written, the local education agency cannot provide a needed service, written justification as well as a time line for making the services available shall be included.
6. A description of the extent to which the child will participate in regular education. Where regular classroom placement is not appropriate, the extent of participation in other less restrictive environment activities shall be described.	6. Parents must be fully informed of the nature of regular class participation, but it is recommended that the extent of participation in less restrictive environments be described in percentages, days per week, or hours per week. If the child will be in a regular physical education program, this should be noted.

7. The projected date for the initiation of the prescribed services and anticipated duration of the services.	7. Because the IEP must be reviewed/revised annually, the maximum anticipated duration of services is twelve months.
8. A listing of the names and positions of the individuals responsible for implementation of the individualized education program.	

Time Lines

The individualized education program for an exceptional child who is receiving special education shall be reviewed/revised annually. The IEP conference may be held any time throughout the year, as long as a current IEP is in effect for the child at the beginning of each school year.

For an exceptional child who is not yet receiving special education, the IEP shall be developed no later than thirty days from the date when it is determined through the staffing conference that the child requires special education. Such children shall remain in their current placement until the IEP is completed and necessary parental permission obtained.

Responsibility in Contractual Arrangements

The local education agency in which a child resides is responsible for the development and implementation of that child's IEP. When a local education agency refers or places (through a contractual agreement) a child in another accredited special education program (whether public or private), it shall conduct an IEP conference and shall arrange for a representative of the receiving agency to participate. If a representative of the receiving agency cannot attend the meeting, the sending agency shall ensure participation by the receiving agency through other methods, preferably individual or conference telephone calls.

After a child has been placed, meetings to review and revise his/her individualized education program may, at the discretion of the sending agency, be initiated and conducted by the receiving agency. The sending agency, however, shall ensure its involvement, as well as that of the child's parents, in any decision about the child's IEP. Both the child's parents and the sending local education agency must agree to any proposed changes before those changes are implemented.

Parochial or Other Private School Enrollment

If an exceptional child is enrolled in a parochial or other private school and receives special education services from a public education agency, that public agency shall—

1. Initiate and conduct conferences to develop, review, and/or revise an IEP for the child, and
2. Ensure that a representative of the parochial or other private school attends each IEP conference. If the representative cannot attend, other methods to ensure participation shall be used, such as individual or conference telephone calls.

Court Placements and Admissions to State Institutions

If a child is placed by the court in a school district or state institution and if the child is determined by the receiving agency to be exceptional, the receiving agency shall be responsible for developing and implementing an individualized education program for the child. If an exceptional child from a public school program is admitted to a state institution, then the written IEP shall be forwarded without delay, to the receiving institution for implementation and revision as needed. Conversely, when it is determined by a state institution that an exceptional child shall be returned to the community, the receiving district shall be involved in the development/revision of the IEP as needed for implementation in the public schools.

PLACEMENT AND REVIEW

Exceptional children shall be educated in a *least restrictive alternative* program. This statement describes the right of exceptional children to be educated with their normal peers unless clear evidence is available that partial or full removal will provide an improved program for the child. In addition, no placement shall be considered permanent but shall be subject to ongoing review.

Placement in the above context, does not necessarily imply removal of the child from the regular school program, but may mean providing for his/her appropriate learning environment through a continuum of special services available in the regular school. (See LEAST RESTRICTIVE ALTERNATIVES section)

When implementing the level of service recommended in the exceptional child's individualized education program, the procedures below shall be carefully followed.

1. The child and his/her parents shall be afforded all due process rights. (See PROCEDURAL DUE PROCESS section)
2. Placement in any form of special education program shall be considered as a trial placement and shall be subject to review and additional team planning. The child shall be returned progressively to as near a normal setting as possible.
   a. Assessment of the success and appropriateness of the educational program recommended for an exceptional child should be ongoing on a daily or weekly basis in the instructional setting.
   b. In addition, at specific short-term periods (no longer than twelve weeks) a determination shall be made if a change to either more intensive or less intensive special education services is needed. This informal monitoring could be efficiently accomplished in schools where regular building level staffings between supportive staff (school psychologists, school social workers, and consulting teachers) and the principal and referring regular classroom teachers are held.
   c. When the building level concept for monitoring the child's progress is not implemented, it shall be the responsibility of the special education teacher serving the child (in conjunction with the regular classroom teacher where appropriate) to inform the administrator of special education of any children whose progress may require a change in programming. (See *b.* above.) If desired, the administrator of special education may designate the school psychologist who coordinated the comprehensive evaluation as the contact person for such reports.
   d. A notation that the short-term review was made shall be recorded in the child's IEP.
3. Parents shall be kept apprised of the progress of their child.
4. On an annual basis a conference shall be held to review/revise the child's IEP.
5. A comprehensive re-evaluation shall be conducted if conditions warrant or if the child's parent or teacher requests such a re-evaluation. In no case shall a child be maintained in special education programs for longer than three years without a complete comprehensive re-evaluation. A thorough review shall be conducted annually for children placed in Personal and Social Adjustment program.
6. Informal follow-up of all children for whom special education services have been terminated shall be carried out annually for at least two years. Such follow-up shall be used as one method of alerting the special education staff if additional services are needed.

PROCEDURAL DUE PROCESS

DEFINITIONS

Special Education Action

A special education action means any act on the part of a local education agency by which a child is:

1. Excluded, reassigned, or transferred from regular school classes on the grounds that he/she is an exceptional child and cannot materially benefit from such classes.
2. Placed in, transferred to or from, or denied placement in special education services. This action includes:
   a. The initiation or refusal to initiate a comprehensive evaluation for purposes of determining eligibility for special education services, and
   b. Changes in programming which result from routine periodic re-evaluations of the child's progress and which alter the type or intensity of current special education services.

Consent

Consent means that parental approval for a special education action has been given after the parent has been fully informed of all information relevant to the activity for which consent is sought, including a description of that activity. Signed parental consent shall be valid only for the activity described. K.S.A. 1978 Supp. 72-972 states that the parent of the involved child may revoke his or her consent to the proposed action at any time and may request the hearing provided for in this section of the law.

Parent

As used in this section, the term *parent* means any person acting as lawful custodian of the child.

Lawful Custodian

The term *lawful custodian* in K.S.A. 1977 Supp. 72-972 means —

1. Parent,
2. Step-parent,
3. Foster parent,
4. Guardian,
5. Person having legal custody of the child,
6. Person legally liable for the child's maintenance, care or support, or
7. In the absence of any of the above, a relative or other interested person, provided that the other interested person is not an employee of the State Board of Education or any local board involved in the education of the child.

Public Expense

Public expense means that the public agency either pays for the full cost of the evaluation or service or ensures that said evaluation or service is otherwise provided at no cost to the parent.

Independent Educational Evaluation

Independent educational evaluation means an evaluation conducted by a qualified examiner(s) who is not employed by the local education agency responsible for the education of the child.

INTRODUCTORY STATEMENT

The rights of a child in regard to special education actions are guaranteed in Kansas laws, rules, and regulations. Parents and/or the child must be given a complete and clear explanation of any school action which proposes to initiate, refuse, or change special educa-

tion services. They also have the opportunity to participate in decisions made during evaluation and placement procedures toward the end of reaching consensus as to the optimal educational program for the child. Procedural due process begins when a parent, child, or local education agency requests the initiation of a comprehensive evaluation to determine the child's eligibility for special education services. Ideally, the school and the home will work closely together; and both will be in agreement about the course of action most beneficial for the child. If there are differences between the school and the home, every attempt should be made by both parties to resolve these differences through conferences, negotiations, or mediation. Only if the differences are irreconcilable should the legal remedy of due process hearing and appeal procedures be invoked.

LOCAL EDUCATION AGENCY DUE PROCESS POLICIES

Each local education agency shall—

1. Draft and adopt special education due process procedures which are in compliance with the requirements of this Plan,
2. Place a copy on file with the Kansas State Department of Education as a part of the local comprehensive plan for special education, and
3. Be responsible for all due process proceedings relating to all exceptional children who reside within its jurisdiction.

Member districts of a special education cooperative or interlocal agreements may draft jointly a set of due process policies, subject to adoption by the board of education of each member district. Member districts in a special education cooperative are individually responsible for implementing due process procedures, including conducting any hearing requested by a resident parent/child. Interlocal units duly authorized under K.S.A. 72-8230 have the same rights and responsibilities as a local school district in implementing due process procedures and may conduct hearings for member districts.

DESIGNATION OF LAWFUL CUSTODIAN

Intent

It is the intent of state and federal law that each child have an advocate to represent his/her interests in all special education actions. In most cases this advocate will be the child's parent(s) or guardian(s). For any child whose parents or guardians are unknown or unavailable, for example, deprived children as defined in K.S.A. 38-802 or children who are wards of the state, a lawful custodian must be appointed to represent the child. The person determined to be the child's lawful custodian shall have all of the rights guaranteed to children and parents under this Plan.

Local Education Agency Responsibility

Before taking any special education action, the local education agency shall —

1. Determine whether the child's parents or guardians are known and available to represent the child.
2. If the child is a ward of the court, notify the court and request the appointment of a lawful custodian.
3. If the child is a ward of the state, notify the Area Office of Social and Rehabilitation Services and request the appointment of a lawful custodian.
4. If the person having legal responsibility for the child is not known or is unavailable, cause proper proceedings to be instituted pursuant to the Kansas Juvenile Code to determine whether the child is deprived.

NOTIFICATION OF PROPOSED SPECIAL EDUCATION ACTION

Written Prior Notice

Prior to taking any special education action, the local education agency shall notify each child, or his or her parents. The notification shall be given in writing by restricted mail or personal delivery. The written notification shall be in a language understandable to the

general public and shall be provided in the primary language of the home. If the native language or other mode of communication of the home is not a written language, the notice shall be orally translated into the primary language or other mode of communication of the home. Steps shall be taken to ensure that the parent/child understands the content of the notice.

The contents of the notification, as specified in K.S.A. 1978 Supp. 72-972 and 121a503, Title 45, CFR, must —

1. Describe the proposed action and state the reasons why such action is deemed appropriate for the child, such as evaluation procedures, tests, records, or reports upon which the action is based. This description should include options considered by the local education agency and reasons for rejections of those options.
2. Afford the parent the right to consent or object to the proposed action in writing upon forms provided by the board.
3. Describe all of the rights regarding procedural due process.
4. Inform parents that, if they fail to object or consent, the proposed action will be taken by the local education agency.
5. Inform the parent of any free or low cost legal services or other relevant services in the area.
6. Indicate the opportunity to obtain an independent evaluation of the child.
7. Describe parents' right to access school reports, files, and records related to the proposed action, and
8. State that the child will remain in his/her present education placement until such time as there is a decision following the due process hearing or until a proposed educational placement is accepted by both parties. If the complaint involves admission of the child to public school, the child, with the consent of his/her lawful custodian, shall be placed in a public school program pending completion of all proceedings.

PARENTAL CONSENT FOR PROPOSED SPECIAL EDUCATION ACTION

Preplacement Comprehensive Evaluation

Prior to the initial placement of an exceptional child in a special education program, a comprehensive evaluation shall be conducted in accordance with the requirements of the SCREENING, EVALUATION, PLACEMENT, AND REVIEW section of this Plan. When a child is referred for a comprehensive evaluation, the parents shall be notified as specified above and given the opportunity for a personal conference concerning the reason for referral prior to the implementation of the evaluation. The notice shall also include a clear description of proposed evaluation procedures, for example, kinds of tests used, approximate duration of the evaluation procedure, and other relevant information.

If the parents give written consent for the evaluation, it may be initiated immediately. In the absence of written consent, no action shall be taken within a period of thirty days, which period shall afford the parents the opportunity to indicate their objections to the evaluation. If, after the thirty-day waiting period, the parents have failed to consent or object to the written request for permission, the evaluation may be initiated.

If the parents refuse permission for evaluation, the local education agency shall attempt resolution through individual conference(s). If the parents still refuse to allow the proposed evaluation, the local education agency shall either accept the decision, apply to a court of competent jurisdiction for an order directing such an evaluation, or pursue a local education agency initiated hearing for the purpose of securing the authority to perform such an evaluation. To this end, records of contacts and consultations with parents shall be maintained.

Comprehensive Re-evaluation

When an exceptional child has been placed initially in accordance with the requirements of this Plan, parental consent for re-evaluation shall not be required providing that:

1. The child's individualized education program is current and has been reviewed/revised annually; and
2. The child's parents have been given prior written notice of the proposed re-evaluation.

Placement

Prior to the initiation or change of special education programming for a child, the child in question and/or his/her parents shall be given written prior notice as has been specified in this section of this Plan.

If the parent gives written consent for the proposed action, the change may be initiated immediately. If the parent objects to the proposed placement, the local education agency shall attempt resolution through individual conference(s). If the parent still refuses permission to place, the local education agency shall accept the decision or initiate a due process hearing. In the absence of written consent, no action shall be taken within the period afforded the parent to request a hearing. This period shall not be less than thirty days. If, after the thirty-day waiting period, the parents have failed to consent or object, the proposed action may be initiated provided that the local education agency has made and documented reasonable attempts to obtain written parental consent or written or verbal objection.

PARENTAL RIGHT TO OBTAIN AN INDEPENDENT EVALUATION

Section 121a503, Title 45 CFR requires that parents be advised of their right to an independent educational evaluation prior to the initiation or change of special education programming for a child. Each local education agency shall provide to parents, on request, information about where an independent evaluation may be obtained.

1. Right to Evaluation at Public Expense: An independent educational evaluation shall be provided at public expense if the parents disagree with the evaluation by the local education agency, unless the local education agency initiates a due process hearing to show that its evaluation is appropriate. If the final decision is that the school's evaluation is appropriate, the parent still has a right to an independent evaluation; but its expense does not have to be borne by the school. The independent evaluation, however, must be considered by the local education agency and/or any hearing officer in decisions made with respect to the provision of a free appropriate public education for the child.

   Whenever an independent evaluation is provided at public expense, the criteria under which the evaluation is obtained must be the same as the criteria which the local education agency uses when it initiates an evaluation. The credentials of the independent evaluator(s) must be at least comparable to the credentials of the local education agency's evaluators. The local education agency shall not be responsible for the costs of unreasonably expensive independent evaluations when comparable evaluations can be obtained at a lesser cost.
2. Parent Initiated Evaluation: If the parent obtains an independent evaluation at private expense, the results of the evaluation:
   a. Must be considered by the local education agency in any decision made with respect to the provision of a free appropriate public education to the child, and
   b. May be presented at any special education due process hearing or review.
3. Requests for Evaluation by Hearing Officer: If a hearing officer requests an independent educational evaluation as a part of a hearing, the cost of the evaluation shall be at public expense.

INDIVIDUALIZED EDUCATION PROGRAM

Special education programming shall not be initiated for a child prior to the development of an individualized education program. The individualized education program for each child receiving special education services shall be reviewed/revised annually.

The individualized education program is a written statement of the special education and ancillary services needed by a child based on his/her current level of functioning. It assigns responsibility for the delivery of these services, sets forth the anticipated changes in the child's behavior, and describes how these changes will be measured. Parents and, when feasible, the child must be given opportunity for active participation in the development, review, and revision of the IEP in a conference with appropriate school personnel. Specific requirements governing the IEP process are set forth in the SCREENING, EVALUATION, PLACEMENT AND REVIEW section.

The IEP conference is an extension of the special education procedural safeguards guaranteed by state and federal law. The purpose of the meeting is to ensure active and open parental involvement in formulating personalized educational goals for a child and designating the specific special education and related services needed to help that child achieve those goals. Local education agencies should view the IEP process as an opportunity to achieve consensus between home and school which will prevent conflict resulting in a due process hearing.

Regarding parental participation in IEP meetings the local education agency shall take steps to ensure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

1. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend.
2. Scheduling the meeting at a mutually agreed on time and place.
3. Indicating in the notice the purpose, time, and location of the meeting and who will be in attendance.
4. If neither parent can attend, using other methods to ensure parent participation, including individual or conference telephone calls.
5. If a meeting is conducted without parent attendance, recording attempts to arrange a mutually agreed on time and place, such as detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits.
6. Acting as is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents/children who are deaf or whose native language is other than English.
7. Providing the parents with a copy of the IEP.

Parental signature on a child's individualized education program is not required as a matter of procedural due process. When the local education agency, after reasonable attempts, is unable to obtain parental participation, the IEP must be developed by school personnel. It is recommended that parents sign the IEP document to which they agree. Such signature shall not constitute permission for the proposed special education action, nor shall failure to sign constitute a parental objection to the proposed special education action.

PREVENTION OF DUE PROCESS HEARINGS

The intent of state and federal special education due process requirements is to protect children from thoughtless or capricious actions by schools or by parents. Usually parents and school personnel assume their proper responsibilities in regard to the education of children and have little or no difficulty in reaching mutual agreement about the initiation, continuation, or termination of special education services.

The statutory provisions of prior notice to parents, multidisciplinary evaluation and staffing, the IEP conference, and informed parental consent should be regarded as measures which enhance communication between the home and school and prevent misunderstandings or conflicts. All of the parent-school contacts required prior to a special education placement can be used by the school to discover parental concerns and to deal humanistically with these concerns. The school can explain clearly and honestly the child's learning problems, the proposed special education interventions, and the anticipated benefits for the child. Both parties should be open to exploration of alternatives which will benefit the child.

The following procedures are recommended as additional steps which may be taken by the school to prevent conflict situations requiring resolution through a due process hearing.

1. In-service for administrators, teachers, and support staff on communication skills and conferring with parents of exceptional children.
2. Public dissemination of information on local special education services and parent/child rights.
3. Mediation procedures to precede any scheduled due process hearing.

LOCAL EDUCATION AGENCY DUE PROCESS HEARING

If there are irreconcilable differences between parents and the school as to the appropriateness of a proposed special education action, both parties are afforded an opportunity for resolution through an impartial due process hearing.

Parent Initiated Hearing

Parents may request a hearing which must be held within thirty days from the date on which the request is received by the local education agency. The request for a hearing should be made in writing to the board of the local education agency. Upon receipt of such a request, the board shall appoint an impartial hearing officer(s).

Local Education Agency Initiated Hearing

If the local education agency requests a hearing, the hearing shall take place within thirty days from the date on which written notice of the hearing has been received by the parents. Said notification shall not be sent to the parent prior to (1) the local education agency's receipt from the parent of written objection to the special education action in question, or (2) the elapse of the thirty day response period which is granted to the parent in regard to the proposed special education action in question in the instance where the parent fails to consent or object to said special education action.

Impartial Hearing Officer

K.S.A. 1978 Supp. 72-973 provides that the due process hearing conducted by the local education agency shall be conducted by a hearing officer or officers appointed by the board. No such hearing officer may be a member of the board and shall not be any person who:

1. Is responsible for recommending the proposed action upon which the hearing is based,
2. Has a personal or professional interest which would conflict with his or her objectivity in the hearing, or
3. Is an employee of the State Board of Education or of any board involved in the education of such child.

Each local education agency shall maintain a list of the persons it has designated as hearing officers. This list must include a statement of the qualifications of each person named.

Responsibilities of the Hearing Officer Prior to the Hearing

The hearing officer is responsible for assuring that due process is afforded both parties to the hearing. He/she is equally responsible for attempting to mediate the conflict between home and school. Toward this end he/she shall —

1. Verify through personal or telephone contact that the parents understand their right to an independent evaluation and their right to access school reports, files, and records related to the proposed action.
2. Verify through personal or telephone contact that both parents and school officials understand the rights of parties in a due process hearing. These rights, as specified in K.S.A. 1978 Supp. 72-973 are —
   a. *The right of the parties to have counsel of their own choice present and to receive the advice of such counsel or other person whom they may select;*
   b. *The right of the lawful custodian of the child to be present at the hearing;*
   c. *The right of the child and his or her counsel or advisor to hear or read a full report of the testimony of witnesses responsible for recommending the proposed action and of any other material witnesses;*
   d. *The right of the parties and their counsel or advisor to confront and cross-examine witnesses who appear in person at the hearing, either voluntarily or as a result of the issuance of a subpoena;*
   e. *The right of the parties to present witnesses in person or their testimony by affidavit, including expert medical, psychological, or educational testimony;*
   f. *The right of the child to testify in his or her own behalf and give reasons in opposition to the proposed action;*
   g. *The right of the parties to prohibit the presentation of any evidence at the hearing which has not been disclosed to the opposite party at least five (5) days prior to the hearing;*
   h. *The right of the parties to have an orderly hearing;*
   i. *The right of the child to a fair and impartial decision based on substantial evidence; and*
   j. *The right of the parties to have a record of the hearing made by mechanical or electronic recording or by an official court reporter.*
3. Make arrangements for an interpreter if necessary. At all stages of the due process procedures, interpreters for deaf and non-English speaking parents/children shall be provided at the expense of the school district.
4. At least ten days prior to the hearing, notify the parties in writing as to the time and place of the hearing. K.S.A. 72-973 requires that the hearing be conducted at a time and place reasonably convenient to the parents.
5. Obtain from both parties a summary of the evidence they will present and a list of the persons who will represent and/or appear as witnesses for them at the hearing.
6. If necessary, request the clerk of the district court to issue subpoenas for the attendance of witnesses and/or the production of relevant records.
7. Determine parent/child wishes regarding the participation of the child in the hearing. If the child is over the age of majority, he/she shall have the right to attend the hearing. If the child has not reached the age of majority, the parents shall have the right to determine whether he/she should attend the hearing, unless the hearing officer finds that attendance by the child would be harmful to his/her welfare. The child may then be excluded from portions of or the entirety of the hearing by the hearing officer.
8. Determine parent wishes as to whether the hearing will be open or closed. The hearing shall be closed to the public unless the parents request an open hearing.
9. At least five days prior to the hearing furnish each party with a hearing agenda which includes a written summary of the evidence and a comprehensive list of the representatives/witnesses. It is recommended that this responsibility be discharged at a pre-hearing conference with the parties in order that the real issues of the hearing may be clarified. If the conflict between home and school is a problem in communication, this meeting may provide a vehicle for resolution.

Due Process Hearing

The hearing officer(s) shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner to the end that all the parties involved in the hearing have an opportunity to present their evidence and testimony in accordance with the requirement of K.S.A. 1978 Supp. 72-973. The burden of proof as to the appropriateness of any proposed placement shall be upon the local education agency. A record of the hearing shall be made by mechanical recording or by an official court reporter.

Decision of the Local Hearing

The hearing officer(s) shall render a decision not later than five days after the conclusion of the hearing. The decision shall be based solely on evidence and testimony presented at the hearing. The decision shall be put in writing and shall be sent by restricted mail to the parties or to their respective representatives within twenty-four hours after the results are determined. After deletion of any personally identifiable information, the decision shall be sent also to the State Advisory Council for Special Education. The written decision shall include findings of fact, conclusions of law, and reasons for these findings and conclusions. A summary of the proceedings at the hearings shall be made and include any materials or statements specifically requested by any of the parties to appear in the record. This summary shall be made available to the parties of the hearing. The decision of the hearing officer(s) shall be final, subject to appeal by either party in the manner provided for in K.S.A. 1978 Supp. 72-974.

APPEAL FOR STATE BOARD REVIEW

Review By State Board

An appeal for review of the decision of the hearing officer to the State Board of Education may be initiated by the child, his/her parents, or by the local board of education. The appeal shall be made by filing a written notice of appeal with the State Commissioner of Education not later than ten days after receiving the written decision of the local due process hearing. The local education agency shall immediately submit the following to the State Board of Education:

1. A complete and certified transcript or record of the local hearing.
2. All affidavits, documents, and other evidence produced at the hearing.

Not later than twenty days after the notice of appeal is filed, the State Board of Education or a review officer(s) appointed by the State Board of Education shall complete the following:

1. Examine the transcript of the hearing, including all affidavits, documents and other evidence.
2. Determine whether the procedures at the hearing were in accordance with the requirements of due process.
3. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the State Board. If applicable, the parties shall be notified of their opportunity to present oral or written argument not later than ten days prior to the date on which such argument will be heard. All notices shall be sent by restricted mail.

Decision of the State Board

The State Board of Education shall render its decision not later than five days after the completion of the review. If a reviewing officer(s) has been appointed to conduct the review, he/she shall submit a written report to the State Board of Education. After receiving the report, the State Board of Education shall decide the matter with or without additional review.

The decision of the State Board of Education shall —

1. Include reasons for upholding or refuting the findings and conclusions of the due process hearing.

2. Be based solely on evidence and oral argument presented during the review.
3. Be accompanied by a statement that the decision may be appealed to the district court as provided by K.S.A. 60-2101.

The decision of the State Board of Education shall be sent to the parties by restricted mail.

GENERAL REGULATIONS OF HEARINGS AND APPEALS

Any hearing officer or reviewing officer conducting a hearing may administer oaths for the purpose of taking testimony under the authority of K.S.A. 1978 Supp. 72-975. The costs of any hearing by a local board of education under K.S.A. 1978 Supp. 72-972 shall be paid by the school district in which the child resides.

Unless appealed, the decision resulting from any hearing or review is binding upon the local board of education, its officers, employees, and agents.

Unless appealed, the decision resulting from any hearing or review is also binding upon the parents or guardians or upon the child if over the age of majority.

Any hearing officer, reviewing officer, or party to the hearing or review may request the clerk of the district court to issue subpoenas for the attendance and testimony of witnesses and the production of all relevant records, tests, reports, and evaluations under the authority of K.S.A. 1978 Supp. 72-975.

A person shall not be considered an employee of a local board of education solely because he/she is paid by the board to serve as a hearing officer. Any such appointment shall apply to a particular hearing or to a class of hearings as specified by the board in making the appointment.

K.S.A. 72-977 reads as follows: *When a school district provides special education services for exceptional children as required by this act, and a determination has been made as provided in K.S.A. 72-972 to K.S.A. 72-975, inclusive, of this, that a child is an exceptional child and special education services are necessary for such child, it shall be the duty of the parent or guardian of such exceptional child to require such child to enroll for and attend the special education services which are indicated by such determination.*

EXCEPTIONAL CHILDREN IN STATE INSTITUTIONS

K.S.A. 1978 Supp. 72-970 states that *Every state institution shall provide special education services for all exceptional children housed and maintained in the state institution and said special education services shall meet standards and criteria set by the state board.* Under this authority the procedural safeguards of due process and confidentiality as set forth in this plan are extended to all exceptional children housed and maintained in state institutions.

It should be noted that each local education agency is responsible for the education of all exceptional children (as specified in K.S.A. 1976 Supp. 72-933 and 72-966) unless and until it has been determined:

1. That the education of an exceptional child cannot be achieved satisfactorily in any public school program,
2. The child meets criteria for admission to a state institution, and
3. The child is admitted to a state institution.

PLACEMENT OF CHILDREN BY PARENTS OR GUARDIANS

Whenever an exceptional child is offered free and appropriate special education services within his/her local education agency of residence and the child's parent or guardian chooses to place the child in a private school, the parent or guardian shall assume full financial responsibility for the child's education. If a parent contends that he/she has been forced to seek and bear the cost of private schooling for an exceptional child because the

responsible local education agency does not offer an appropriate special education program and if the local education agency disagrees, due process procedures may be implemented to resolve the disagreement and the question of fiscal responsibility.

CONFIDENTIALITY

INTRODUCTORY STATEMENT

Following the precedent of national legislation, such as the Buckley Amendments, the Vocational Rehabilitation Act of 1973 (Section 504), and portions of P.L. 94-142, Kansas legislation requires that the State Board of Education and the board of every school district *shall adopt a policy in accordance with applicable federal laws and regulations to protect the right of privacy of any student or pupil and his or her family regarding personally identifiable records, files and data directly related to such student or pupil* (K.S.A. 1977 Supp. 72-6214).

The following policies have been adopted by the Kansas State Board of Education to assure the protection of the confidentiality of any personally identifiable data collected or maintained pursuant to the identification and evaluation of children for purposes of placement in special education.

NOTIFICATION POLICY

The State Board of Education and each local education agency shall be responsible for informing the public of policies and procedures established to assure the confidentiality of personally identifiable data, information, and records collected or maintained by the agency pursuant to the location, identification, evaluation, and educational placement of exceptional children. The notice shall be given in the native languages of the various population groups of the State.

PARENT/CHILD RIGHTS POLICY

The following rights must be assured in the confidentiality policies and procedures of all State agencies participating in the identification, location, and evaluation of children for purposes of placement in special education and related services. The Kansas State Department of Education itself also shall observe these requirements in protecting the confidentiality of any personally identifiable information which it collects and/or maintains on exceptional children.

1. Access Rights of Parents
   a. Parents or their duly authorized representative shall be permitted to inspect and review any personally identifiable data relating to their children without unnecessary delay (in no case more than forty-five days after the request has been made) and prior to any hearing relating to the identification, evaluation, or placement of the child. *(Note:* The agency may presume that the parent has authority to exercise this right unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.)
   b. If any record includes data on more than one child, parents shall inspect and review only those data relating to their child. If this is not feasible, parents must be informed of the data specific to their child.
   c. Parents shall be provided a response to reasonable requests for explanation or interpretation of the data by a qualified professional.
   d. Records which name all persons obtaining access to a child's records (excluding parents and authorized employees of the agency), the date access was given, and the purpose for which the person was given access to the records shall be maintained.
   e. A listing shall be kept of the types and locations of data collected and maintained by the agency. This listing shall be made available to parents upon request.
   f. No charge shall be made to parents to search for or to retrieve data. The agency may charge a fee for copies of records which are made, if the fee does not

effectively prevent parents from exercising their right to inspect and review those records.

2. Hearing Rights of Parents
   a. Parents may request appropriate amendments to records which they believe to be inaccurate, misleading, or in violation of the privacy or other rights of the child.
   b. Within a reasonable period of time, either (a) the records shall be amended as requested, or (b) the parents shall be notified of the agency's decision to refuse the request and advised of their right to a hearing in order to challenge the data.
   c. Upon parental request, a hearing shall be conducted to determine whether or not the challenged data are inaccurate, misleading, or in violation of the legal rights of the child.
   d. If a hearing is requested, it shall be held within a reasonable period of time after the request; and the parent shall be given advance notice of the time, date, and place of the hearing.
   e. The hearing shall be impartial, that is, conducted by a party who does not have a direct interest in its outcome.
   f. Parents may present evidence relevant to the issues and may be assisted or represented by individuals of their choice (including an attorney) at their own expense.
   g. Parents shall be notified in writing, within a reasonable period of time, of the agency's decision. This decision shall be based solely upon the evidence of the hearing and shall include a summary of the evidence and the reasons for the decision.
   h. If, as a result of the hearing, the agency decides that the record should be amended as requested, it shall so amend the record. If the agency decides not to amend the record, it shall inform the parents of their right to enter into the records a statement about the challenged data which gives their reasons for disagreeing with the decision of the agency. This statement shall be maintained in, and treated as part of, the child's records as long as the records or the contested portion thereof is maintained by the agency.
   i. If parents are in disagreement with the results of the hearing, they may appeal to the Kansas State Department of Education which shall review the pertinent facts and attempt to resolve the disagreement through communications with the parents and the agency.

3. Parental Consent Policy

   If parental consent is denied in any of the following cases, the agency involved shall attempt to seek resolution through individual conference(s). If the parents still refuse to allow the proposed action, the agency shall either accept the decision or apply to a court of competent jurisdiction for an order directing the parents to comply. To this end, records of contacts and consultations with parents shall be maintained.
   a. Parental consent shall be obtained before personally identifiable data are —
      1. disclosed to anyone other than officials of the agency collecting or using the data. (Section 438 of the General Education Provisions Act shall apply to educational agencies.)
      2. used for any purpose other than identification and evaluation for purposes of determining a need for special education and related services, and
      3. used for purposes other than those previously specified to the parent.
   b. Parental consent shall be sought before a child is given a comprehensive evaluation as specified in this Plan.

SAFEGUARDS

The local education agency shall give assurance that:

1. The confidentiality of data shall be protected at collection, storage, disclosure, and destruction stages.
2. One official shall be designated by the agency to be responsible for assuring the confidentiality of any personally identifiable data.
3. Provision shall be made for instruction regarding the federal laws and regulations, as amended, and state policies and procedures as set forth in this document for all personnel collecting or using personally identifiable data.
4. A current listing of the names of agency personnel who may have access to personally identifiable data shall be maintained for public inspection.

DESTRUCTION OF DATA

Destruction means physical destruction or the removal of personal identifiers so that data is no longer personally identifiable.

1. Parents shall be informed when personally identifiable information is no longer needed to provide educational services to the child and be notified of their right to request that the information be destroyed. If the parents request that the information be destroyed, the agency shall comply. However, a permanent record of the student's name, address, and telephone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.
2. When informing parents about their rights in regard to the destruction of personnally identifiable information, the agency should remind them that the records may be needed by the child for social security benefits or other purposes.

CHILDREN'S RIGHTS POLICY

When a child has reached the age of majority, eighteen years, the permission or consent required of and the rights accorded to parents of the child shall be required of and accorded to only the child (1) providing the child is not dependent as defined by Section 152 of the Internal Revenue Code of 1954 and (2) taking into consideration the nature and severity of the child's exceptionality.

ENFORCEMENT POLICY

The Kansas State Department of Education shall review the confidentiality policies and procedures submitted by each local education agency as part of its local comprehensive plan for special education and the policies of other participating agencies in order that the U.S. Commissioner of Education may be advised as to Kansas' eligibility for funding under Education for All Handicapped Act; Title I, ESEA; and other federal programs for the handicapped. Program visitations by the Kansas State Department of Education staff shall include a review of the implementation of local confidentiality policies and procedures.

Federal funds for the handicapped administered through the Kansas State Department of Education will be withheld from any agency found to be substantially in violation of state and federal policies, rules, and regulations regarding the confidentiality of personally identifiable data.

TEACHER RESPONSIBILITY AND THE LAW

by
Stephen P. Foster and Faith Scofield
The University of Kansas

Teacher responsibility under Pub. L. 94-142 can be examined from several different perspectives. One perspective is provided by special education, and another is provided by the roles for teachers which federal law creates. The content of teacher responsibility is thus a function of both sound educational practice and of the various duties imposed upon teachers by federal as well as state guidelines. What constitutes sound special education practice is available from many sources; among these are texts, monographs, journals, available research, and consultation or expert advice. Relevant experience is also important. The purpose of this unit is limited to an overview of federal law regarding handicapped students which helps to shape the teacher's roles, and therefore his or her responsibilities.

Teacher Trainee Outcomes

The teacher trainee will be able to describe the teacher's responsibility under P.L. 94-142 regarding the referral process, evaluation, and the IEP.

Instructor Information

Prerequisites:

Prior to beginning this unit teacher trainees should demonstrate a general knowledge of P.L. 94-142 due process procedures.

Organization:

The teaching time for this unit is approximately three hours of class time. The unit is organized into major enabling activities with one optional activity.

Content Overview:

The content of this unit is focused on assisting the preservice educator to understand his/her responsibilities to handicapped children as mandated by P.L. 94-142.

Suggestions for Teaching:

The teacher trainees should read the article by Foster prior to class time. The instructor should discuss basic teacher responsibilities, provide small group interaction, and complete activity one on "Legal Awareness/the Rights of the Handicapped Student in the Public Schools." A second optional activity is available to allow students to see how different courts treat a similar issue differently.

Teacher Responsibility

I. Referral Process
   A. Role as referring teacher.
   B. Written notice requirements regarding referrals.
   C. Parental consent requirements.

II. Evaluation Process
   A. Teacher as part of multidisciplinary team.
   B. Mandate for inclusion of regular class teachers on multidisciplinary team for evaluating a child suspected of having a specific learning disability.
   C. Parental consent requirement for evaluation.
III. IEP Stage
   A. Participant inclusion.
   B. Teacher responsibilities.
      1. Provide information regarding child.
      2. Suggest content for IEP.
      3. Provide clear and accurate information regarding evaluation procedures and results.
      4. Should not be expected to assume major responsibility for developing IEP.
      5. May be involved at one or more IEP meetings regarding a child.
   C. Guidelines for designation of specific teacher attendance at IEP meeting.
IV. IEP and Teacher Accountability
   A. Relief from accountability if child does not meet projected goals.
   B. Must make good faith effort to assist handicapped child meet stated goals and objectives.
   C. Relief from potential civil liability for student evaluations (oral and written) when procedures follow state guidelines.

Suggestions for Teaching:

At least one three-hour class session will be needed for completion of this unit. Approximately two hours should be spent in lecture and discussion of material. One hour should be spent in reading and completing activity 1 on "Legal Awareness/the Rights of the Handicapped Student inthe Public Schools." Consideration may be given to having the student complete the activity as an outside activity requirement. A second optional activity is provided regarding legal awareness.

Suggestions for Evaluation:

Staff judgement of the performance regarding class discussion and of the class activity will constitute the evaluation procedures for this unit.

Appendices:

At the end of this unit are activities on "Legal Awareness/the Rights of the Handicapped Student in the Public Schools," for use as an in-class or out-of-class activity.

TEACHER RESPONSIBILITY AND THE LAW

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Stephen Foster and Faith Scofield

Prospectus

Understanding the roles in which a teacher may be expected to serve under Pub.L. 94-142 is an increasingly important teacher competency. While a complete appreciation for the responsibilities of teachers under this federal statute may well require several years of actual teaching experience, an introduction to these responsibilities forms a basic part of teacher education. This unit will introduce the prospective teacher to these responsibilities, and should foster as well the acquisition of beginning competencies in this important domain of teacher preparation. A heightened awareness of how the law shapes public education is also an expected benefit from studying this unit.

Objectives	Enabling Activities
1. The teacher trainee will be able to describe the teacher's responsibility regarding the referral process.	1. Class discussion: Review paper by Foster. 2. Handout 1: Teacher Responsibility Under Pub.L. 94-142. An Overview of Teacher Roles.
2. The teacher trainee will be able to describe the teacher's responsibility in the evaluation process.	1. Class discussion: Review paper by Foster. 2. Handout 1.
3. The teacher trainee will be able to describe the teacher's responsibility in the IEP process.	1. Class discussion: Review paper by Foster. 2. Handout 1. 3. Activity 1: Legal Awareness/Rights of the Handicapped Student in the Public Schools. Students should read activity, complete questions for analysis and discussion, and discuss their written responses. 4. Activity 2: Legal Awareness/Rights of the Handicapped Student in the Public Schools. An optional activity for students to see how different courts treat a similar issue differently.

Required Reading:

Foster, Stephen. "Teacher Responsibility Under Public Law 94-142: An Overview of Teacher Roles." Unpublished paper. University of Kansas, 1980.

Activity 1

Legal Awareness/the Rights of the Handicapped Student in the Public Schools

This activity relates only indirectly to the stated objectives since it involves introduction to an issue broader than specific teacher roles under Pub. L. 94-142: how might a case alleging educational malpractice be treated by a federal court? This activity is designed only to present this issue for discussion purposes and is not designed to be, nor should it be used as, a complete statement of the law in this complex area.

1. Read the following statute: "Any party aggrieved by the findings and decision made under subsection (b) who does not have the right to an appeal under subsection (c), and any party aggrieved by the findings and decision under subsection (c), shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate."

—20 U.S.C. section 1415(e)(2)

Note: the reference to subsection (b) refers to procedural rights granted to the parents/guardian of a student to examine records of a handicapped child, contest placement (or identification, or evaluation), or contest failure to identify, evaluate, and place a child in appropriate educational services, or contest that school personnel failed in some other fashion to follow legal procedures specified by the statute. Perhaps it could even include a claim that the parents were not properly notified by school personnel concerning their handicapped child when the district proposed to initiate or change the child's placement. In this connection, it may be worth noting that the scope of possible claims allowed under the statute is somewhat inexact, since 20 U.S.C. section 1415(e) provides that parents/guardians have:

> "(e) an opportunity to present complaints with respect to *any matter relating to* the identification, evaluation, or educational placement of the child, or the provision of a free appropriate education to such child." (emphasis added)

Once a request for a hearing is received by a school district, the parents' (or surrogate's) rights to a due process hearing are triggered. In Kansas, an initial hearing is to be provided within thirty days of the receipt of the request for a hearing. If the parents are dissatisfied with the hearing officer's decision, they may then appeal to the Kansas State Board of Education for another review of their complaint. This second stage of appeal granted to parents or their surrogate is what is referred to by "subsection (c)" in the statute above (20 U.S.C. section 1415(e)(2)).

a. Question for analysis: Under the language of section 1415(e)(2), wouldn't a complaining party first have to use the administrative hearing process described above before filing a complaint in either state or federal court?

b. Does section 1415(e)(2) speak to the question whether parents or a student can obtain money damages against school officials for failure to observe procedural rights, or for failure of a student to achieve at a specified educational level? (see last phrase in sec. 1415(e)(2)).

2. Statement of Problem and Directions

(1) Read the statement of facts below carefully; (2) read these facts in light of your knowledge concerning the rights of handicapped children in public schools—e.g., the child's right to a free, appropriate

education designed in light of his or her needs, and the right to attend school in an environment which is "least restrictive" relative to the child's handicapping condition. After reading the facts below, consider the discussion and analysis questions.

3. A student, fifteen years old, is a student in District X. The student has been previously diagnosed as learning disabled. The student claims that since 1971, the year the student entered first grade, that it has been obvious to school personnel that the student has suffered from educational disabilities greatly impairing both reading and writing skills. In 1974 the student was reevaluated and diagnosed by school personnel as learning disabled for the first time.

The student now claims, in 1978, that this evaluation was insufficient since it failed to identify the extent of the student's problems. The student also says that the education received since 1974 has been deficient due to a lack of educational resources in District X.

The student has also claimed that District X had failed to implement an IEP (individualized educational program). But now the district has developed an IEP for the student, to which the parents have agreed. Accordingly, this part of the complaint is no longer at issue.

Nevertheless, the student states that District X was negligent inasmuch as it should have implemented an appropriate educational program earlier in the student's school career.

The parents seek advice from an attorney, and a complaint is later filed in federal court. The complaint is filed on behalf of the student and his parents who now claim that the defendant school officials were negligent in failing to implement the right program earlier in the student's school career. The complaint seems to be based on the idea that the school failed to properly diagnose and take effective steps to remedy the student's educational difficulty.

One million dollars in money damages is sought from the school district.

4. **Questions for discussion and analysis**

   a. What mistakes (if any) did the district make?

   b. If you find mistakes were made, do you think they could have been avoided? How?

   c. Does the failure to diagnose the student earlier as learning disabled render the district liable in damages?

   d. Does a school district guarantee that an IEP will produce specific learning results for a student? Do you, as a teacher, make such a guarantee? Does the term "free, appropriate public education" imply such a guarantee? If it does, does it then follow that the student's claims are valid? Why, or why not?

   e. If the district is held to be negligent, who ultimately will pay the million dollars in damages? The superintendent? The principal? The teachers? One, or several? If you assume the decision is favorable to the student and the parents, is the general public affected in any by this decision? (Consider how public schools are financed.)

   f. How do you think this case should be decided? Explain why, and state your reason or reasons for your decision.

(Note: the above facts were adapted from **Loughran v. Flanders**, 470 F. Supp. 110 (D. Conn. 1979); after reading this case, another case should be compared. *See*, **Boxall v. Sequoia U. High Sch. Dist.**, 464 F. Supp. 1104 (N.D. Calif. 1979). Can these cases be reconciled with each other?)

Activity 2
(Optional)

Legal Awareness/the Rights of the Handicapped Student in the Public Schools

This activity relates indirectly to the stated objectives since it involves introduction to an issue different from teacher roles under Pub. L. 94-142—are monetary damages recoverable under this statute? This activity is designed only to present this question for discussion, and is not designed to be, nor should it be used as, a complete statement of the law in this complex area.

Directions:

(1) Re-read the statutory material provided in Activity 1.

(2) Read the statute provided below:

"No otherwise qualified handicapped individual in the United States, as defined in section 706(7) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ." —29 U.S.C. section 794 (Section 504 of the 1973 Rehabilitation Act).

(3) In the following statement of facts, you can assume District Y receives federal funds.

(4) Analyze the following facts; then consider and answer the discussion questions which follow.

a. **Statement of Facts**

In 1976 a student was ready to enter high school in District Y after previously coming under the jurisdiction of a different district. Earlier in the year, the admissions and discharge committee of District Y had met to consider the student for admission. The parent was not informed of this meeting or of his right to appear at it. At the meeting, the committee agreed that the student suffered from autism and that there was no program within District Y which would be appropriate for him. Accordingly, his situation was referred to the county program, operated by the county under contract with the district. The county admissions and discharge committee decided that the county program was also inappropriate since in its opinion the student needed a one-to-one relationship with a teacher because of the nature of his condition.

In the fall, the father met with personnel from the district and was told that a state consultant rejected the county findings. It was suggested that the student be observed within the county program before assuming that it was inappropriate. The parent, since it was seen as causing damage to the student, refused to allow his placement in the county program. Thereafter, the committee decided to make no recommendation until the student was observed in the county program or until a new report was obtained from a school psychologist or other relevant agency.

A district psychologist, at the county's request, then evaluated the student on January 11, 1977, and concluded that he needed a "one-to-one, highly individualized program." This recommendation was not acted upon.

On October 10, 1977, early in the next school year, the father requested a hearing under the regulations issued under the Education for All Handicapped Children Act of 1975. The hearing panel met on January 11, 1978, and determined that an independent agency should develop an IEP for

the student. And, on May 1, 1978, a regional center agency made such an assessment, and agreed with the student's father and the previous assessment of the student's educational needs.

The admissions and discharge committee of District Y accepted the IEP, but it did not implement the recommendation while it appealed the hearing panel's decision. Instead, the committee offered to provide a home tutor for one hour a day, as opposed to the recommended six hours per day. The offer was refused, and the student therefore received no aid from the state, district, or county for the academic years 1976-1977 and 1977-1978.

During this time, however, the father retained a tutor at his own expense, and now seeks reimbursement for expenditures involved in securing this tutor.

On May 9, 1978, the father requested a hearing on the issue of his damages for securing the private tutor. The hearing panel met on June 23, 1978 and reached a decision on July 2, 1978. The father appealed this decision, and an appellate (appeals) hearing was held on August 29, 1978. Although the time period for ruling on the appeal had passed as of October 6, 1978, no ruling had been made.

Thereafter, the father and his son filed a lawsuit in federal court by means of a complaint which alleged the above facts. The complaint named as defendants the school district, the state, the county, and individuals representing those institutions.

The father and son asked for an injunction against the defendants and also asked for money damages for the alleged failure of District Y to provide the son with a free, public education appropriate to his needs by failing to pay for a full-time private tutor in the student's home.

The county filed a motion to dismiss the complaint.

Questions for analysis and discussion

1. Some courts have required persons who bring complaints under either the Education For All Handicapped Children Act of 1975, or under the Rehabilitation Act of 1973 to first use any available administrative procedures for hearing their complaints before they can file a lawsuit in federal court. Assuming that this rule of exhaustion of administrative remedies applies to the facts above, should the court rule that the father and son have already fulfilled this requirement, and thus the court can hear their complaint?

2. Does the statute in part (2), page 1, allow the father and son to bring their claims against the school district? What language are they relying on to allow for this result? Would such a right have to be *implied*, if it is found to exist at all, since the language doesn't expressly provide for a right to sue?

3. Assuming such a right to sue is indeed implied by the court, does that also mean that the father and son are entitled to money damages? (Consider how this claim here might differ from the claim made for educational malpractice in Activity 1.) Are the two fact situations different enough to allow relief here, but to deny it under the facts in Activity 1?

4. Assume the federal court rules that the Rehabilitation Act of 1973 (29 U.S.C. section 794 specifically) does *not* authorize a court to award money damages, even when the facts are as stated above. Does this mean the father and son are out of court?

5. Assume that the court rules that damages are not authorized under the 1973 Act, but that they are authorized by the 1975 Act. Would this ruling be connected in any way to the requirement in the 1975 Act that schools receiving federal funds must provide a free appropriate education to all handicapped students? Are key terms "free" and "appropriate"? Is there a strong basis in the facts given in this activity for such a ruling?

6. Now, compare the facts in Activity 1 with the facts here, in Activity 2. Do you see any major distinction in what the complaining parties were able to show the court (in terms of the facts stated(alleged) in their respective complaints)?

(Debriefing note: the above activity was based on Boxall v. Sequoia U. High Sch. Dist., 464 F. Supp. 1104 (N.D. Calif. 1979); interested students might want to read the case).

Teacher Responsibility Under Public Law 94-142:

An Overview of Teacher Roles

by

Stephen Foster

I. Introduction

Teacher roles may be subdivided into three general areas:

(1) referral, the triggering event in the chain of events which may lead to provision of special services to a handicapped student (such services might also be provided as a result of district or school-wide screening procedures, of course);

(2) evaluation of a student as handicapped; and

(3) development, implementation, review and revision of an individualized education program (hereinafter "IEP") for a handicapped child.

Broadly speaking, a teacher involved in any of these processes is responsible for providing information and/or services appropriate to the particular process or stage in the special services continuum.

But the teacher's specific responsibiliites flow from his or her particular role. Since the federal law with regard to handicapped students affects these roles, a basic understanding of teacher responsibility can be gained from examining how federal law helps to determine the various capacities teachers might be expected to fill. The remainder of the discussion examines these roles in greater detail under the framework of the law. Teacher concern about

"accountability" is also discussed, since federal regulations promulgated under Public Law 94-142 speak to this concern.

II. Referral

This stage leads to the teacher's role as the referring teacher. This role can arise when the teacher first becomes aware of a student's problem and makes the decision to refer the student to the school's special services team for consideration and possible evaluation. While different school systems use different forms for such purposes, in general the method by which an individual teacher (as opposed to input to district-wide screening programs) alerts the school's staff to a student's possible handicap is by filling out the appropriate referral form.

The provisions of Pub. L. 94-142 do not explicitly state that parents must consent to such a referral being sent by the teacher to the school staff, but under federal regulations parental consent is required, however, before any evaluation of a student for a possible handicapping condition is undertaken.

The matter is different with regard to notice, as opposed to consent, however. If notice to the parents is made, then the federal regulations would seem to be fulfilled. Written notice which meets federal requirements [1] must be

must be given to the parents of a handicapped child a reasonable time before a public agency (e.g., the school):

> "(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child."[2]

Under this regulation, it is clear why such notice of referral ought to be made. Under the language of subsection (1), whenever a school "proposes to initiate . . . the identification, . . . of the child . . .", written notice comporting with detailed requirements for such notice must be given to the parents of a handicapped child. That this is required is demonstrated as well by the Kansas State Plan for Special Education (1980 version). Regarding notice of referral to the parents, the Kansas State Plan states that:

> "When a child is referred for a comprehensive evaluation, the parents shall be notified as specified above and given the opportunity for a personal conference concerning the reason for referral prior to the implementation of the evaluation. The notice shall also include a clear description of proposed evaluation procedures, for example, kinds of tests used, approximate duration of the evaluation procedure, and other relevant information."[3]

As the referral agent, the teacher is responsible for providing accurate and as detailed information as possible concerning his or her observation of the child. As a practical matter, accuracy and relative completeness of data would also help the school's special services team in making its decision whether to proceed to the evaluation stage. The team's judgement may be that an evaluation is not needed, based in part at least on the data contained on the referral form.

If the decision to proceed to evaluation is made, however, a teacher could be placed in one or more new roles appropriate to that stage of the process. These roles are discussed in Part III below.

III. Evaluation

Teacher responsibility under federal law regarding evaluation may arise in several ways. Under federal regulations, for example, the evaluation must be made by "a multidisciplinary team or group of persons" which includes "at least one teacher or other specialist with knowledge in the area of suspected disability."[4] The classroom teacher could be the person so chosen, assuming he or she has the requisite knowledge. If selected, the teacher would therefore be expected to use this special knowledge for an evaluation and provide it to the team.

A teacher might also be asked to provide information to the evaluation team even though he or she is not a team member. The reason is another federal regulation which provides, in part, that:

> "(a) In interpreting evaluation data and in making placement decisions, each public agency shall:
> (1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;" . . .[5] (emphasis added)

The comment to this regulation calls the process of using various sources of data for evaluation the "multisource requirement." The teacher could therefore be one of these information sources. Accuracy of data is again the teacher's responsibility if he or she is asked to provide such information. These data must be documented. Moreover, since an evaluation team must prepare a written report when the child being evaluated is suspected of having a specific learning disability,[6] a teacher could

conceivably be asked to help write this required report (or to write it in its entirety). Under the same regulation,[7] each team member (and this could include a teacher) "shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions." Depending on circumstances, then, a teacher who is a team member must either certify agreement with the required report, or submit a separate statement which represents his or her conclusions.

A teacher who is a team member, but not the child's regular teacher, might be asked to observe a child's academic performance in the regular classroom setting[8] or outside the regular classroom if the child is not school-aged or if the child is out of school.[9] The role of observer could therefore devolve upon the teacher in this connection.

A child's regular teacher must be an evaluation team member when the child being evaluated is suspected of having a specific learning disability. The reason for this mandatory requirement is a special section in the federal regulations which specify "additional procedures for evaluating specific learning disabilities."[10] Under this section, the regulation requiring "additional team members" provides that:

> "In evaluating a child suspected of having a specific learning disability, in addition to the requirements of sec. 121a.532, each public agency shall include on the multidisciplinary evaluation team:
> (a) (1) The child's regular teacher; or
> (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
> (3) For a child of less than school age, an individual qualified by the State educational agency to teach a child of his or her age; and
> (b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher."[11] (emphasis added).

Under this regulation, then, a "regular classroom teacher" could well be involved in serving on the evaluation team, assuming that the child being evaluated is "suspected of having a specific learning disability."

In summary, the teacher may be expected to serve in a multiplicity of roles at the evaluation stage. In addition, while the team coordinator may be the person designated as responsible for ensuring that notice is given to parents, and their consent to evaluation is obtained, the teacher should also be aware of these requirements. Particularly in a district in which teachers and other personnel are burdened with excessive work and caseloads, omission of notice or consent can occur. The alert teacher can help to ensure that these requirements are met. Notice is vital to comport with due process procedures ensured to children and their parents under federal law; the same is true with respect to informed consent. In this connection, the federal regulations provide that:

> "(b) Consent.
> (1) Parental consent must be obtained before:
> (i) Conducting a preplacement evaluation; and
> (ii) Initial placement of a handicapped child in a program providing special education and related services.
> (2) Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child."[12]

Under the regulation it is clear, for instance, that conducting a preplacement evaluation without parental consent would violate federal law.

IV. IEP Stage

One possible outcome of an evaluation team's analysis is a conclusion that the child is not handicapped. In this event, no special services under federal law will be provided, unless the parent(s) invoke due process procedures and get this decision overturned by a hearing officer

or court after invoking these available procedures. This is so since Pub.L. 94-142 contemplates a finding that a particular child fits into one of the statutorily recognized categories of handicap before qualifying for special services. In other words, the child must be properly evaluated as handicapped before special services are to be provided.[13]

On the other hand, if the evaluation team concludes that a child is indeed handicapped, then the next stage in the process is the development of an IEP for the child. The federal law contemplates a meeting at which several participants, which include both parents, and various school personnel, will develop, review, or revise the IEP. In practice, however, the IEP is sometimes written out prior to meeting with parents, at least in outline form, and then approved by the parents prior to implementation. Nevertheless, federal law is clear that specified persons attend the IEP conference or meeting. This regulation of participants affects teachers, since they are named as required participants. These participants include:

> "(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.
> (2) The child's teacher.
> (3) One or both of the child's parents, subject to sec. 121a.345.
> (4) The child, where appropriate.
> (5) Other individuals at the discretion of the parent or agency."[14]

In addition, in the case of a handicapped child who has been evaluated for the first time, other required participants include: a member of the evaluation team (which could be the teacher if he or she was a team member), or the representative of the public agency (e.g., the school), the child's teacher, or some other person "who is knowledgeable about

the evaluation procedures used with the child and is familiar with results of the evaluation."[15]

Thus, a teacher could be involved at the IEP meeting in several ways. As the child's teacher, he or she could be expected to provide information concerning the child to the participants, and could be asked to suggest the content of the IEP as well. As a person knowledgeable concerning the procedures used and the results of the evaluation, or as a formal evaluation team member, he or she is responsible for providing clear and accurate information to the child's parents and other participants concerned with evaluation procedures and results. Finally, the teacher may in practice be expected to assume a major portion of the responsiblity for developing the IEP; this result, however, is arguably not what is intended by the regulation establishing required participants in the IEP meeting. If this were what was intended by the federal law, then there would be no reason to mandate participants at the meeting; instead, what is obvious is that the design of the IEP is supposed to be the culmination of cooperative effort between parents and school personnel, which includes more than the child's teacher.

It is also important to note that a teacher could conceivably be involved at the IEP meeting at one or more times. This is the case since the regulation regarding meetings describes three different stages for the IEP meeting:

> "(a) General. Each public agency is responsible for initiating and conducting meetings for the purpose of <u>developing</u>, <u>reviewing</u>, and <u>revising</u> a handicapped child's individualized education program.[16] (emphasis added).

The teacher could therefore be involved during one or more of these

meetings with respect to a child's IEP. Like the evaluation stage, the IEP stage presents an array of possible roles for the teacher, and these roles could occur at different times.

Assuming that the child's teacher is required to attend an IEP meeting, a question arises as to which teacher is meant: Is the referring teacher or some other teacher required to attend the meeting? A range of answers is provided by the comment to the regulation discussed above.[17]

> "Comment. 1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:
> (a) For a handicapped child who is receiving special education, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.
> (b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.
> (c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.
> 2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.
> 3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under paragraph (b) (1) of this section would normally be the speech-language pathologist."

From this comment, it is apparent that no definite answer can be provided to the question: Which teacher must attend the IEP meeting? Instead, the answer depends on the particular circumstances, including the nature of the handicapping condition of the child, and the proposed placement of the child as well. An array of possibilities is thus suggested. However, several guidelines in this comment may be used to help outline the process by which the proper "teacher" is to be selected.

First, for a child now getting special education, the child's special education teacher is an appropriate participant at the meeting. Secondly, in the case of a speech-impaired child, the appropriate "teacher" is the one qualified to diagnose and provide services to such a child. Third, in the case of a child being considered for special education placement, three alternatives are suggested: (1) the regular teacher (and possibly this was the referring teacher, as well); (2) the special education teacher, or (3) both of these teachers. Fourth, the comment makes clear that the teacher in attendance at the IEP meeting "should be qualified in the area of the child's suspected disability." (Part 2 of comment). This guideline probably overrides more specifically suggested participants, and thus acts as the initial selection tool for choosing which teacher ought to participate in the IEP meeting. One implication of this rule is that if a teacher is not so qualified, and is being directed by school officials to attend the IEP meeting when the district has a teacher who is qualified, then it is reasonable to suggest that the qualified teacher ought to be the one selected to attend the meeting. This assumes, of course, that the "agency representative" is not appropriately qualified. (Since Part 2 of the comment uses the conjunctive "or," if the agency representative is qualified, the teacher need not be.)

V. The IEP and Teacher Accountability

One possible anxiety teachers may feel concerns the question of accountability for a child's performance in accordance with the terms of the IEP. While a teacher is responsible for providing the services stated in the IEP, if he or she is named as the person responsible for

providing such services, he or she is relieved of accountability if a child does not achieve the growth projected in the annual goals and objectives. A specific regulation has been promulgated on this point of concern. The regulation (and comment as well) provide as follows:

> "Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.
>
> Comment. This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objectives and goals listed in the indivd-ualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made."[18]

Under this provision, while it is clear that the IEP is not a contractual guarantee of a child's specific performance, it is also clear that schools and teachers must make good faith efforts to help a handicapped child reach the goals and objectives specified by the IEP. The services listed in the IEP, then, are to be provided, but no guarantee is made as to their results. The protection offered to teachers, then, is specifically limited under this regulation and its comment. Moreover, due process procedures are available to a dissatisfied parent to question a school's efforts regarding a handicapped student.

Another point of concern for teachers is with their potential civil liability for evaluations which they may make concerning a student being

considered for special services eligibility. Since federal law contemplates a teacher serving in multiple roles as an information source, this question is perfectly understandable. At least for teachers in Kansas, some protection from such potential liability has been provided by state statute.[19] This statute provides as follows:

> "72-982. Evaluation of students and pupils; judicial proceedings; immunity from liability. Any teacher, administrator, or other school employee participating without malice in the making of any oral or written evaluation of a student or pupil in the public schools as part of the screening, diagnosis and certification of exceptional children procedures adopted under the provisions of the special education for exceptional children act or the state plan for special education, or in any follow-up actitity to such an evaluation, shall have immunity from any civil liability that might otherwise be incurred or imposed from any such evaluation. Any such teacher, administrator, or other school employee shall have the same immunity with respect to participation in any judicial proceeding resulting from such evaluation." (emphasis added)

That this statute does not provide an unbroken umbrella of protection may be seen from the following analysis.

First, the statute by its terms applies only to teachers, administrators, or "other school employee." If one is not a school employee, as a one-time, or perhaps even a part-time consultant might be considered, the immunity granted by the statute might not even apply. Secondly, the making of any oral or written evaluation of a student or pupil must be made "without malice." Evaluations made as a result of ill will, or under circumstances from which ill will could be reasonably inferred, presumably are not evaluations made "without malice," and therefore any immunity given would be arguably not applicable. Malice takes the immunity away, in other words. Third, the statute by its terms applies only to situations involving students or pupils "in the public schools."

The question obviously arising from this language is whether the immunity would apply to a teacher working in a private, or non-public school. Fourth, what if a teacher is called upon to make an evaluation of a child who is not presently a "student or pupil" in the public schools, e.g., a child who may presently be in an institution which is not a public school and who is not a student or pupil? Again, the statute by its terms appears not to provide immunity in such a situation.

Additionally, the statutory immunity would appear to apply only where the screening, diagnosis, and certification of exceptional children follow state law procedures--i.e., "procedures adopted under the provisions of the special education for exceptional children act or the state plan for special education." Whether the immunity would apply when these procedures are not followed is a serious question. Also, the immunity applies to "any follow-up activity to such an evaluation." The key term--"any follow-up activity"--is undefined, although it must apparently have a connection to an evaluation. An issue arising under this language is, for example, whether immunity granted applies to facts involving a misplacement of a student. Although broad--"any follow-up activity to such an evaluation"--it could well be interpreted not to cover misplacement facts.

The immunity statute, then, appears to grant teachers and others a blanket immunity from civil liability for oral or written evaluations, but upon inspection, the coverage is not as broad as initially appears. Nevertheless, where state law procedures are followed, and screening, diagnosis, and certification of exceptional children is undertaken,

the immunity granted should serve to promote honest evaluations. Indeed, the promotion of accurate evaluations would seem to be at least one of the purposes of this statute. Teachers who rely on this immunity, however, need to consider its possible limits, some of which have been suggested above.

NOTES

1. The written notice must comply with the detailed requirements of 45 C.F.R. section 121a.505 ("Content of Notice").
2. 45 C.F.R. section 121a.504(a)(1), (a)(2) (Prior Notice; parent consent.).
3. Kansas State Plan for Special Education (1980), p. 85.
4. 45 C.F.R. section 121a.532 ("Evaluation procedures."); subsection (e).
5. 45 C.F.R. section 121a.533 ("Placement procedures"); subsection (a)(1).
6. 45 C.F.R. section 121a.543 ("Written report.").
7. Ibid., note 6.
8. 45 C.F.R. section 121a.542 ("Observation."); subsection (a).
9. Ibid., note 8; subsection (b).
10. 45 C.F.R. section 121a.540 ("Additional team members."); general heading.
11. 45 C.F.R. section 121a.540.
12. 45 C.F.R. section 121a.504(b) ("Parent consent").
13. 45 C.F.R. section 121a.531 ("Preplacement evaluation.").
14. 45 C.F.R. section 121a.344 ("Participants in meetings.").
15. 45 C.F.R. section 121a.344(b)(2).
16. 45 C.F.R. section 121a.343 ("Meetings."); subsection (a).
17. 45 C.F.R. section 121a.344 ("Participants in Meetings."); comment thereto.
18. 45 C.F.R. section 121a.349 ("Individualized education program-accountability.").
19. K.S.A. 72-982 (Supp. 1979).

HISTORICAL ISSUES IN EDUCATING HANDICAPPED STUDENTS

by
James Hillesheim and Barbara J. Kerr
The University of Kansas

It follows from the mandate of the "Least Restrictive Environment" that the classroom teacher know how to be an effective facilitator for the incorporation of handicapped students into the regular classroom. To be this effective facilitator, the teacher must be able to perceive the needs of the handicapped in the context of the school and the community. Before appropriate responses toward meeting the needs of these students can be decided upon, one needs to know something of the historical developments which stand behind our present situation. This will provide a perspective for understanding something of the problems and roadblocks that others have met in effecting change, as well as solutions and responses that were forthcoming.

The purpose of this unit, therefore, is to provide insight into some of the major historical events that have shaped our American schools. Further, the unit is designed to increase awareness of social, community, and school options for the education of exceptional learners.

Teacher Trainee Outcomes

Upon completion of this unit, the teacher trainee will be able to discuss, in historical perspective, major events and trends that have helped shape the course taken by special education in the United States.

Instructor Information

Prerequisites:

Although there are no true prerequisites to this unit, it might be meaningful to the teacher trainee if the three units concerned with legislation preceding this one have been studied. It would also be helpful if the teacher trainee has a general familiarity with the organization and structure of the American school system. The instructor, of course, will need the same knowledge.

Organization:

The basic content of this unit is comprised of readings which provide information regarding historical issues and events in American education. In addition, the teacher trainee is required to prepare a short list of events that are significant in the development of the education of the exceptional child.

Content Overview:

The readings provide insight into those events, laws, and people who have had historical impact on the shaping of American education and the eventual inclusion of the handicapped into the phrase, "an equal education for all."

Two one hour sessions would be suggested to discuss the content of this unit. A combination lecture/discussion format would seem appropriate. The instructor will need some out-of-class time to become familiar with the required readings for this unit.

Suggestions for Evaluation:

Instructor's judgement of the written projects and evaluation of class participation/interaction can suffice for evaluating the skills and knowledge gained by the teacher trainee.

HISTORICAL ISSUES IN EDUCATING HANDICAPPED STUDENTS

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Prospectus

No part of society is separate from the fabric of the whole, although we in the social sciences are sometimes tempted to view the parts as only parts. Before the teacher trainee can view the "special child" as part of the social fabric it will be best to view the tapestry that has formed the whole of our society. Ben Brodinsky's suggestive article entitled "Twelve Major Events That Shaped America's Schools," gives the teacher trainee a wide-angle view of American education from Jefferson's time to our own. The teacher trainee is cautioned to be aware of omissions as well as overt assertions. Please note that the "special" child is seldom if ever mentioned in traditional treatments about the history of American educational change. Fortunately we are now beginning to see some effort directed at correcting this neglect.

One example of such an effort is Maynard C. Reynolds' brief but informative and well-balanced "Historical Perspective" on the education of exceptional children. Reynolds employs four "Rough Time Periods" to simplify and gain perspective on what could easily become a mass of historical detail. While focusing on the particular concerns of educating the exceptional child, Reynolds also takes into account those larger social and political forces which influence and sometimes even initiate changes in the treatment and education of the exceptional child.

This competency may be fulfilled by implementing any one of the following objectives:

Objectives	Enabling Activities
1. The teacher trainee will list 12 major societal events that have shaped America's schools and will indicate which, if any, are significant in the history of special education.	1. Reading 1: Brodinsky.
2. The teacher trainee will briefly describe the dominant facilities and procedures used to educate atypical children during each of the four major time periods from late 19th century to the present.	1. Reading 2: Reynolds.

Readings:

Brodinsky, Ben. "12 Major Events That Shaped America's Schools." *Phi Delta Kappan*, 58, (September, 1976), pp. 68-77.

Reynolds, Maynard C. "Changing Roles of Special Education Personnel," *Trends in Education*. Columbus, Ohio: University Council for Educational Administration, (pp. 2-9). Not copyrighted.

Ben Brodinsky

12 Major Events That Shaped America's Schools

Jefferson's 1779 dream of a state system for "the more general diffusion of knowledge" failed in his lifetime but has been more than realized in the 200 years of our national history. Mr. Brodinsky identifies milestones along the way.

Getting an education in the years when America was about to become a nation was no problem if you were male, white, Protestant, wealthy, and wellborn. For these select few there were brilliant Scottish tutors, private schools, and academies. Harvard, William and Mary, Yale, Princeton, and Brown (and a half dozen other colleges) were small but growing. Southern gentlemen traveled to England and Scotland to round out their education in the classics. Young ladies learned poetry, painting, and dancing at exclusive seminaries.

For the vast majority of the population, only the most meager schooling existed – and that schooling was rudimentary, word-dry, dominated by religious dogma. Blacks, girls, or very young children had few opportunities.

Two hundred years later, the United States supports a system of public and private schools that is the envy and wonder of the world. From the youngest to the oldest, from the richest to the poorest, opportunities exist for their education, primarily at public cost, in a range of skills, subjects, and courses undreamed of in 1776.

Thousands of events helped shape America's education during the past two centuries. They took place in the scholar's study, in legislatures, in courts – and on riot-torn streets and campuses. There were the invention of the steel pen (replacing the quill) and publication of Noah Webster's blue-backed *Spelling Book*, destined for a long series of editions and many millions of copies; there were George Washington's call for a national university and a state governor standing at the schoolhouse door to block the entrance of a black student; the concept of the I.Q. (for better or for worse) and the phenomenon of 80-year-old grandparents flocking to community colleges. Education has been called America's religion, its bread, and its circus.

Out of the countless incidents and developments that have helped bring about America's educational systems, here are 12 major events of pivotal significance.

BEN BRODINSKY has reported educational trends for more than 40 years. He started when the U.S. Office of Education invited him to write federal news releases at a salary of $1.00 a year, cut to 85 cents when President Hoover reduced all federal salaries by 15%. When the New Deal came, Brodinsky's salary rose by 4,000%.

*Since 1933 Brodinsky has published some 500 articles; written 2,000 newsletters (*Education Summary, Educator's Dispatch, Teacher's Letter, Edpress Newsletter*); and has edited as many as 32 news publications a month for Croft Educational Services (1945-1970).*

He lives in Old Saybrook, Connecticut, his base for consulting and editorial services to the Educational Press Association, the National Association of School Boards, the National School Public Relations Association, and the Association of American Publishers. He is now vice president of the Connecticut State Poetry Association and reads two or three original poems a month before that group. "Helps keep my nouns and verbs sharp," he says.

1. Jefferson Dreams – and Fails

1779 – Thomas Jefferson introduced his school bill for Virginia, the first plan for a statewide school system in the New World.

Three years after drafting the Declaration of Independence, the remarkable Mr. Jefferson, age 36, put his quill to work on another soon-to-become-historic document. He called it "A Bill for the More General Diffusion of Knowledge." Jefferson's plan, borrowed partly from French revolutionists, was for statewide, public education from first grade to the university, narrowed by the notions of his time that the chief beneficiaries should be only free children. It was an unprecedented piece of school legislation. It consisted of 19 sections, some short, some running close to a thousand words, an amalgam of high educational policy and detailed regulation.

To assure that those entrusted with power do not turn it into tyranny, Jefferson wrote in a preamble, it is necessary to illuminate the minds of the people. Education, he continued, is the means for achieving this. But since only the wealthy and wellborn can afford a liberal education, the General Assembly must provide for the education of all capable, even if indigent, children at the common expense.

The bill called for the election of aldermen, county by county, to meet the first Monday in October, "if it be fair." Their task was to plan for the acquisition of land, construction of schools, hiring of teachers, supervision of instruction, testing and evaluation. All free children, male and female, were to receive free elementary education for three years in a curriculum stressing the basic skills.

The bill also called for 20 secondary

Brodinsky, Ben. "12 Major Events That Shaped America's Schools". Phi Delta Kappan, 58, September, 1976, pp. 68-77. Copyright by Phi Delta Kappa, Inc. 1976. Reproduced by Permission.

schools throughout the state ("grammer" schools, Jefferson called them), "the tuition to these to be paid by the scholars." In addition to Latin and Greek, Jefferson's bill prescribed "English grammer, geography, vulgar and decimal fractions, and the extrication of the square and cube roots." Jefferson proposed scholarships for elementary pupils who were of "promising genius and disposition, but whose parents were too poor to give them further education." He also wanted scholarships for bright but needy secondary students, who were to proceed to William and Mary, at Williamsburg, there to be "educated, boarded, and clothed for three years at public expense."

The plan was too much, too early for Virginia. Seventeen years later the legislature passed it, but, as Jefferson complained, with a provision that completely defeated his dream, "for they left it to the court of each county to determine for itself when this act should be carried into execution. . . . It was not suffered to commence in a single county."

So did Jefferson's plan for common schools fail. He was more successful in higher education. When he saw that church-controlled William and Mary would not fit into his brave schemes, he set about creating the state-controlled University of Virginia. He ranked it as one of his three greatest achievements – next to the Declaration of Independence and Virginia's statute for religious freedom.

Jefferson's educational aspirations were immense. Equally immense were the aspirations he kindled in others, down to our own day. His Virginia bill, though ignored and vitiated by his legislature, helped bring free education to New England, the Midwest, the Far West, and eventually to his own South and his native state.

2. The Great Real Estate Gambit

1787 – Congress enacted the Northwest Ordinance, with means "forever encouraging education."

America was not yet a nation in 1784; it lacked a constitution and a strong central government. But imperishable longings were stirring even within the loose Confederation of the States. Beyond the 13 colonies lay the vast, rich lands of the Northwest. Congress knew their value. So did land grabbers and speculators, lying in wait to buy or lease at pennies per acre. Congress declared its control over and policy toward this domain in three ordinances (1784, 1785, and 1787). Essentially real estate manuals, they gave details for the surveying and sale of the lands. But they also contained a bill of rights for the inhabitants and forbade slavery. And in an immortal sentence, the Ordinance of 1787 declared: "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

Before sale and settlement, the territory was to be mapped into townships six miles square, each divided into 36 sections. One of these, Section 16, was designated for the support of schools. Sales were to be for no less than a dollar an acre and in units of one section. This meant that Section 16 could yield at least $640 – a handsome sum for raising a school and hiring a teacher.

The states which emerged from territorial lands (Ohio, Indiana, Illinois, Michigan, Wisconsin, part of Minnesota) did not rush to put their acreage to work for schools. Ohio waited for a quarter of a century before doing anything for schools, with or without Section 16 help. But an important principle had been established: federal aid to education. School aid through land grants was continued, with a few exceptions, for every new state admitted to the union. Starting in 1850, two sections for school support were given newly admitted states; later, many colleges and universities came to share in the national land largesse. In all, the government donated well over 100 million acres for educational endowment.

Few could foresee the incalculable effects on education of the ordinance provisions. But it did not take long for statesmen to sense their impact. Daniel Webster, speaking of the political and educational results of the Ordinance of 1787, said: "I doubt whether any single law, ancient or modern, has produced effects of a more marked or lasting character."

3. Knock, Knock! Who's There? A Woman

1821 – Emma Willard founded the Troy Seminary in New York; soon after, the doors to higher education for women were slowly pried loose all over the country.

The enlightened nineteenth century was in its second decade. But no college in the world admitted women. Men argued that anything beyond reading, writing, arithmetic, sewing, and cookery would unsex females; it would overtax and probably break down their minds.

Mary Lyon

Schools for girls and young ladies flourished in many parts of the new nation, but their offerings seldom rose above the rudiments, plus the decorative arts (dancing, music, painting).

Emma Hart, a dynamic young woman from Connecticut, at first accepted these limits and carried on successfully as teacher and schoolmistress in her native state and later in Middlebury, Vermont. Her intelligence and rebellious spirit soon broke through the restrictions, however. Encouraged by her husband, Dr. John Willard (28 years her senior), she drafted a Plan for Improving Female Education. It stirred protests, applause, and nationwide discussion. Jefferson read it and liked it. It was addressed primarily to the New York State legislature, because Emma Willard had set her mind on getting state support for a revolutionary women's academy and she had reason to hope for help from Albany. Her efforts as America's first woman lobbyist for education failed. But the little town of Troy, seeking new markets for its products, thought that a female academy would be good promotion. With a town appropriation of $4,000, Willard not only made Troy famous but proved that women could master mathematics, history, geography, and "natural philosophy" without losing their femininity or their minds.

Collegiate education for women pushed ahead slowly. In 1822 Catharine Beecher founded the Hartford Female Seminary; and in 1835 the Female College came in Georgia. Mary Lyon, a

Photo: Reproduced from the collection of the Library of Congress

native of Massachusetts, bolder than her predecessors, raised $68,000 and began building what became the Mount Holyoke Seminary (1837). This institution moved further away from the decorative arts for women and sought to offer the hard disciplines – Latin, chemistry, physics. Yet, throughout the country, women's education remained separate and hardly equal to that of men. It was not until 1833, in the Ohio wilderness, that Oberlin became the first coeducational college in the world.

4. Horace Mann: Father of Our Public Schools

1837 – Horace Mann became secretary of the Massachusetts State Board of Education. In 12 years of labor in that post, he shook down the antiquated modes of colonial education and laid the foundation for America's modern school system.

Mann was a superb orator, one of the best lawyers in Massachusetts, a member of the legislature. When Massachusetts created what some thought would be a weakling state school agency, to be headed by an innocuous secretary, Mann took the job, transforming both the agency and the post into instruments of fire and brimstone. He was a furious worker – a fanatic, some said – who hated ignorance, slavery, war, and tobacco, in that order. His loves were education, school, children, teachers, and phrenology. He spent months each year visiting Massachusetts schools, liking little of what he saw. He liked more what he observed in European schools, especially those of Prussia, and this was a basis for both his glory and his anguish.

His chief duty was to prepare annual reports for the state board. He did 12 of them. In these documents, through speeches and letters (sometimes 30 a day, written with a quill), he expounded time and again the incendiary idea: *Free education is the birthright of every American child*. Mann brought together these principles: The common (public) schools must be tax-supported, publicly controlled, free, and compulsory. He said: "The common school is the greatest discovery ever made by man."

To assure teachers for the schools, Mann managed to establish the first teacher-training institution in America (at Lexington, 1839). To make education an instrument for modern life, he sought to free the curriculum of religious dogma and of word-dry subject matter. He brought music, a modicum of practical arts, and libraries to the schools of Massachusetts. He edited the *Massachusetts Common School Journal*, and with his wife, Mary Peabody Mann, filled its pages with lessons for classroom use and policy discussions for administrators.

After a six-month trip to Europe, Mann came back to write his famous Seventh Report. In it he praised the Prussian schools. By comparison, America's teachers and curriculum methods came out second best. The schoolmasters of Boston were stung. They attacked Mann's free thinking, his travels, his preachment of public education. Mann counterattacked with pamphlets and orations. The controversy brought Mann's ideas to the world's attention. But he was hurt. In anguish, he left Massachusetts and took the post of first president of Antioch College. His achievements for higher education were mediocre compared to those for the public schools. Yet his efforts made Antioch America's first truly liberal arts college. Out of his travail, almost at the end of his life, came his deathless admonition to the graduating class of 1859: "Be ashamed to die until you have won some victory for humanity."

5. To School – Willingly or Unwillingly

1852 – Massachusetts enacted the first law compelling children to attend public school.

It was a weak law. Children between 8 and 14 were required to attend school for 12 weeks a year. Nevertheless, the measure was an essential starting point for universal education.

Back in the 1500s, Martin Luther fumed that eternal damnation awaited children who were not compelled to go to school. In 1642 and again in 1647, the religious power structure in Massachusetts required the establishment of schools to teach Bible reading, but did not compel attendance of children, and little was gained for general education as a result. Almost 200 years later, in the 1840s, Horace Mann preached that compulsory education was one of the pillars of a modern public school system. But neither parent, community, nor state was zealous in compelling children to attend school.

At first, the Massachusetts law of 1852 brought little compliance; and there was weak enforcement of this meager span of schooling. Other states were slow to follow the lead. But when

A. R. Waud's drawing of "The District School Teacher" appeared in the December 21, 1867 issue of *Harper's Weekly*.

Photos: Reproduced from the collection of the Library of Congress

the cruel days of the Civil War were over, state after state enacted laws not only compelling attendance but lengthening the required school year and even prescribing what the schools were to teach. The legal machinery grinding out compulsory education was unyielding, if slow. Finally, when Mississippi passed its law in 1918, the entire nation had a blanket of compulsory attendance laws.

The blanket had holes. Some farmers, laboring families, religious groups, and rebels against state-imposed education wanted their children at work, at home, or simply away from public schools. The blanket often failed to cover migrant families and the blacks. In 1925 the U.S. Supreme Court ruled that parents did not have to send their children to public schools – private schools would do just as well. During the 1950s, South Carolina, Mississippi, and Virginia repealed their compulsory education laws – as casualties of the integration wars. But keeping children in school – public or private – had become a national habit. (South Carolina and Virginia soon reenacted compulsory education laws; Mississippi is still debating reenactment.)

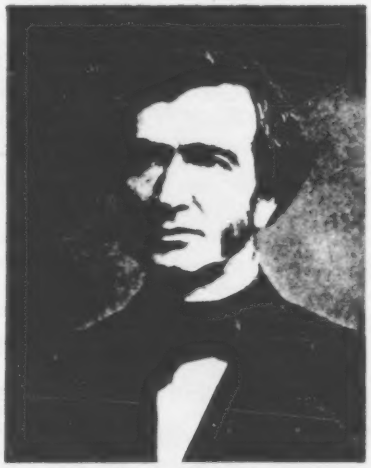
Compulsory education paid off magnificently. It soon brought illiteracy in the U.S. to a level lower than that of any other major industrial nation. Immigrant children, by the millions, were brought into the mainstream of American life. And a sense of national unity developed as children from different parts of the country, from different families, lived and worked through 10 to 12 years of schooling – sharing a heritage of knowledge, goals, and attitudes and often singing the same songs from sea to sea and border to border.

6. People's Colleges for Farmers and Mechanics

1862 – President Lincoln signed the Morrill Land-Grant Act, to endow colleges for the liberal and practical education of the industrial classes.

In one of the darkest hours of the Civil War, the nation began one of its brightest chapters in American education. The Morrill Act has been praised for over a century as one of the most significant single enactments on behalf of higher education in the history of humankind.

A clamor for and against higher education under public control had been going on for generations before the land-grant act. The University of Georgia, established nine years after the Declaration of Independence, became the first state-supported institution, and a half dozen other public universities came soon thereafter. But these institutions hardly met the needs of the vast majority of people. Complaints persisted that future lawyers, doctors, and ministers had their Harvard, Yale, and Princeton, but future farmers and mechanics across the young republic had scant opportunity for higher education.



Justin S. Morrill

First attempts to set up "people's colleges," however, were defeated in Congress and attacked by academicians who feared the erosion of traditional classical education. The proposed "cow college," it was argued, would educate the young *away* from the farm, not *for* the farm. Plato wasn't wanted either on the farm or in factories. One farmer is alleged to have said, "What you going to do with that college up there? Larn 'em to rake harder?"

Lincoln staunchly supported popular education, but it took astute leadership by Vermont's Senator Justin S. Morrill to see the land-grant bill through Congress. When it was finally passed, land grants were made to the states on a basis of 30,000 acres for each member of Congress. Income from the sale of public land was to promote agricultural and industrial education, "without excluding scientific and classical studies." Altogether, Congress eventually gave some 11.4 million acres of land, endowing at least one land-grant college in each of the 50 states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

Over the years, Congress was always a generous friend, enlarging and extending the activities of the land-grant institutions.

Land-grant colleges were among the first to open their doors to women. A second Morrill Act (1890) led to the creation of predominantly black colleges; although separate and unequal, they provided the first higher education opportunities for most Negroes. Agricultural experimental stations, tied in with the public college campuses, produced startling results in more and better food and fiber; science and engineering laboratories fed America's industrial revolution with new machines and manufacturing processes. For the farmer and his wife unable to come to the campus, Congress set up extension courses on home and family problems.

Today, land-grant institutions are among the leaders in training not only experts for farm and industry but also teachers, doctors, lawyers, business administrators, and engineers. Most of the campuses support strong programs in painting, sculpture, drama, literature, and the dance. (Since 1964, Indiana University has granted more degrees in music than any other school in the United States.) And from such institutions as Rutgers, Purdue, and the Universities of Illinois, California, Michigan, and Texas have come accomplishments that have changed the lives of all Americans: the wonder drugs, first sound motion pictures, early research in television, safe commercial canning techniques, isolation of a human cancer virus, and the epoch-making findings of atomic research.

7. Little Fingers Must Be Kept Busy

1873 – The St. Louis Board of Education voted to include the kindergarten as a permanent part of its public school system.

The board acted on the recommendation of its superintendent, William T. Harris, one of the great school administrators of the last century, later to become U.S. commissioner of education in Washington. The idea for "a course" for very young children had been in Harris's mind for some time. He had heard of Germany's *Kleinkinderbeschäftigenanstalt* (small-children-keeping-busy-establishment) and of Froebel's mystical work with young children overseas. He was looking for the right person to help him start such a program in St. Louis.

Susan Blow, a pious, determined woman of social standing and means,

was the person. She had advocated early childhood education for years. At age 40 she knew more about operating kindergarten than anyone in America. Harris asked her to come to St. Louis. She eagerly left New York for the Midwest to put her ideas into action.

At least two other "firsts" preceded the St. Louis kindergarten. The first kindergarten in America was opened in 1855 at Watertown, Wisconsin, by Mrs. Carl Schurz, a pupil of Froebel. It was conducted entirely in German. Chance brought Mrs. Schurz in contact with the idea-hungry, dynamic Elizabeth Peabody of Boston. Peabody forgot her transcendentalism and her interest in Chinese grammar for a while. She began to write, talk, and travel interminably on behalf of the kindergarten idea. She started the first English-speaking kindergarten privately in Boston in 1860. It spurted but soon withered. Peabody was off to other pursuits.

Susan Blow read nearly everything Peabody had written on the kindergarten, including issues of the *Kindergarten Messenger*, which Peabody had filled with essays on the magic value of ball-playing (after all, didn't the word "ball" contain the property of "all," in German and English?). And Blow knew how to put ideas into practice. Encouraged by Harris, the St. Louis kindergarten flourished. The school board was generous. Soon St. Louis was supporting more than 50 public kindergartens. Other cities took up the innovation, looking to St. Louis for ideas. And Americans trudging through the 1876 Centennial Exposition in Philadelphia came upon an intriguing demonstration: a model kindergarten, with children working, playing, and creating, instead of sitting frozen in a row reciting in unison "ba, ba, ba, da, da, da," etc.

Kindergarten in the North-End Industrial Home, Boston, Massachusetts, 1881

8. The Birth of the Public High School

1874 – The Michigan Supreme Court ruled that the city of Kalamazoo had the right to establish high schools and hire a secondary school staff with public money.

The *Kalamazoo* case is historic: It encouraged the spread of the public high school in America. It provided the legal base for a part of the American dream – that an individual could get free, tax-supported schooling from the earliest grades to the university. The high school supplied the necessary rungs for this climb upward.

The battle for the free public high school was long, often bitter. Even while free elementary schooling was still under attack, educators and noneducators were already proposing free secondary education. The first public high school was established in Boston in 1821. A scant half-dozen years later, Massachusetts passed a law requiring a high school in every town of 500 families and over. The proposed curriculum had a touch of modernity: U.S. history, bookkeeping, algebra, geometry, surveying. Only larger towns were required to include Greek, Latin, and that colonial favorite, rhetoric.

Decades passed. The idea of the tax-supported high school languished. Labor unions fought for free secondary schools, but taxpayers' groups overwhelmed them. History records some of the arguments used against the public high school: "What a waste. . . ." "What do we want a high school for to teach the smart children for?" "What a shame to pay a man $1,800 to teach children to make x's and gabble parley vous. . . ."

When Kalamazoo voted, in 1872, to establish a free high school and hire a superintendent of schools, these arguments were among those used against the proposal. To test the issue, a citizen brought suit to prevent additional taxes for the newfangled schools. The case went to the Michigan Supreme Court. In 1874 Chief Justice Thomas Cooley gave the renowned decision: A school district cannot be restricted in its efforts to offer educational opportunities; a public education system has the right to provide the rungs necessary for climbing to the university, if citizens wish to pay for this purpose.

There was no stopping the public high school after this. In state after state, courts struck down attacks against it by following the *Kalamazoo* decision.

Photo: Reproduced from the collection of the Library of Congress

At first a city institution, the public high school began penetrating into rural areas. Arguments about the worth of the high school continued, but students flocked to its doors. By 1890 the high school was entrenched, popular, praised by most citizens. But grumbling about its costs never stopped, and at the beginning of the twentieth century public high schools enrolled only 699,000, or 11% of all youth eligible to attend.

Then came startling events. High school enrollment doubled and doubled again in each decade between 1900 and 1940. Wars and depressions affected public high school growth but little.

What and how the high school should teach continue to be issues for debate today. But the right of this truly American institution to exist was forever settled in Kalamazoo.

9. John Dewey Buys New School Furniture

1894 – John Dewey arrived at the University of Chicago and began working out new ideas for America's schools.

It took less than two decades for John Dewey to show the world that the kinds of schooling children had been getting in the eighteenth and nineteenth centuries would not do for the twentieth. He proposed changes in method and subject matter. He provided new designs for teaching and learning. His ideas stirred, inspired, and angered Americans. He became the most influential, the best known, and the most controversial figure in American (and world) education.

Soon after Dewey decided to set up his Laboratory School, so one report goes, he went looking for furniture for his future classrooms. Nothing he saw in the stores or factories satisfied him. Finally one dealer admitted: "Professor, you want something at which children can work. We have only furniture for children who sit and listen."

As a village schoolteacher in his native Vermont, Dewey knew the blank faces and blank minds of children who sat and listened while the teacher droned on. He sensed there were better ways to prepare youngsters for society, and he sought them through his study of psychology and philosophy.

When he arrived at Chicago, his job was in fact to head the Department of Philosophy, Psychology, and Pedagogy. But life, action, community, experience, practical results – these were Dewey's basic interests. Through his Laboratory School he wanted to demonstrate that children learn to swim by swimming, to talk by talking, to think by solving problems. This was later summed up in a famous dictum, "learning by doing." In his Laboratory School classrooms he ventured to connect school with life outside; to give learning a practical content; to show that for effective education children need not only books but also tools and materials, contact with nature and community, interaction with people, and experiences from which they can learn to guide future actions.

He summed up his findings and his wisdom in speeches, lectures, articles, and books. His *School and Society* (1899), *How We Think* (1909), and above all *Democracy and Education* (1916) were immediately influential, and remain towering classics in education. They are still the works most frequently quoted by education students, theorists, and practitioners. And in thousands of classrooms across the nation his ideas, or part of them, were applied or misapplied, used or misused, interpreted correctly or twisted and distorted.

Dewey left Chicago for New York (1904), and through his courses at Teachers College, Columbia, directly influenced tens of thousands of students from all parts of the United States and the world. He was called upon to advise the educational ministries of Japan and Russia. At home he became prophet, reformer, devil, savior – depending on the groups which attacked him or idolized his ideas. If he is given credit or blame for launching the Progressive Education movement, he must share it with scores of other educators and reformers. He was the best known of them all, however, and became a household and schoolhouse name. Today's schools, teachers, and administrators are different because of his career.

10. G.I.s Crowd into Classrooms

1944 – President Roosevelt signed the Servicemen's Readjustment Act, unanimously passed by Congress, ushering in an educational movement of vast scope and significance.

The soldier, sailor, or airman coming home from World War II service had before him a choice of several benefits – including schooling at Uncle Sam's expense. The G.I. Bill, as the 1944 law was known, gave veterans the opportunity to enroll in secondary schools, technical institutes, colleges, and universities. Or they could get training in industry, on the farm, or through correspondence courses.

The program was an instant success. Young men and women flocked to the nation's campuses, overcrowding classrooms, residence halls, and all temporary housing set up for them. They took up everything from elementary math to postgraduate physics. Large numbers of veterans were married and brought their wives and young families to the campus, or as close to the campus as they could move. Eager for learning, often impatient with dull professorial techniques and institutional rules, the returning veterans helped change and invigorate higher education.

Below the college level and in industry, veterans enrolled in everything from shoe repair to remedial reading, from sales and auto mechanics to electronics. And whether in college, high school, or on-the-job training, the veteran was guaranteed his tuition, monthly subsistence, family allotments, free textbooks, and learning materials by the federal government. The veteran's entitlement to these benefits frequently ran up to four years.

When federal officials looked at the results in 1947, a busy year for veterans' education, they found that $3.5 billion had already been spent for education and training, with more than a million former G.I.s deeply involved in their schooling programs. By 1951, $14.5 billion had been expended for World War II education and training.

Historian Edgar Knight has said that these huge sums have for the most part been wisely spent and that program outcomes have proved beneficial for veteran and country. In a later assessment, Sidney Marland, former U.S. commissioner of education, called the G.I. education movement a "golden period in our history."

With some change in practice, the principles of the G.I. education benefits have been extended to veterans of the Korean conflict (1952) and the Vietnam era (1964). And when, early in 1976, federal officials looked at results once again, they found that during the 32 years the G.I. Bills had provided education and training for a total of 16 million persons at a cost of $34 billion. "It is one of the best investments the nation has ever made," said Senator Mike Mansfield of Montana. "The G.I. Bill story is yet to be completed," said the Veterans Administration.

11. Equal and Side by Side

1954 – The U.S. Supreme Court ruled unanimously that segregation of black and white students in public education at any level was unconstitutional.

Monday, May 17, 1954, started out as a quiet day at the United States Supreme Court in Washington. Reporters expected routine decisions. But the day became memorable in America's history when Chief Justice Earl Warren began reading the court's judgment in *Brown* v. *Topeka*. Within a few minutes, Warren came to the momentous words: "We conclude, unanimously, that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." Months later, in another ruling, the Court ordered the 17 states with dual school systems to begin dismantling them "with all deliberate speed."

For generations, the South had kept the races segregated in schools, colleges, streetcars, restaurants – all public places, all areas of life. Legal power for segregation came some 30 years after Emancipation, when the U.S. Supreme Court ruled in *Plessy* v. *Ferguson* (1896) that "separate but equal" facilities for blacks were not unconstitutional. Segregation became deeply entrenched in schools and colleges throughout the South.

Throughout the half-century after *Plessy*, black leaders charged that the miserable school shacks, poorly prepared teachers, and inadequate instructional materials used for the education of blacks deprived them of their constitutional rights. Historians agree that the separate facilities were never equal.

In slow, halting steps, the U.S. Supreme Court began its retreat from the separate-but-equal doctrine. By 1950 blacks gained admittance to law schools and graduate programs in Missouri, Texas, and Oklahoma. Doors of other graduate and professional schools slowly began opening for blacks. But Southern and border public elementary and secondary schools held firm against integration until cases from South Carolina, Kansas, Delaware, Virginia, and Washington, D.C., were grouped together

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The following list of 37 significant events in the educational history of our 200-year-old nation includes the 12 Mr. Brodinsky describes in some detail in the accompanying article. The latter appear in bold-face type.

1779 – Thomas Jefferson introduced his school bill for Virginia, the first plan for a statewide school system in the New World.

1783 – Noah Webster published the first distinctively American textbook – the phenomenally successful blue-backed *Spelling Book*.

1787 – Congress enacted the Northwest Ordinance, with means "forever encouraging education."

1795 – New York enacted a five-year experimental law to distribute $100,000 a year to its counties for school support – the first state aid to education.

1819 – The U.S. Supreme Court ruled, in the famous *Dartmouth* case, that private institutions of higher learning may not be taken over by the state. This led to a flourishing of private colleges as well as to the spread of state universities.

1821 – Emma Willard founded the Troy Seminary in New York State; soon thereafter, doors to higher education were slowly pried open for women all over the country.

1829 – Samuel R. Hall published his *Lectures on Schoolkeeping*, the first professional book for teachers published in the United States.

1836 – William Holmes McGuffey, a college professor, published the first of his *Readers*. By 1920, about 122 million copies of his series had been sold – making them the most popular of all American textbooks.

1837 – Horace Mann became secretary of the Massachusetts State Board of Education. In 12 years of labor at that post, he shook down the antiquated modes of colonial education and laid the foundation for America's modern school system.

1852 – Massachusetts enacted the first law compelling children to attend public school.

1857 – Teachers, administrators, college presidents, and educational philosophers met in Philadelphia and formed the National Teachers Association, later to become the National Education Association.

1862 – President Lincoln signed the Morrill Land-Grant Act, to endow colleges for the liberal and practical education of the industrial classes.

1867 – Congress created a "National Department of Education," reduced its rank to a bureau two years later, and placed it within the Department of the Interior.

1873 – The St. Louis Board of Education voted to include the kindergarten as a permanent part of its public school system.

1874 – The Michigan Supreme Court ruled that the city of Kalamazoo had the right to establish high schools and hire a secondary school staff with public money.

1876 – A scholar named Daniel Coit Gilman organized and opened Johns Hopkins University in Baltimore, the first graduate school in the United States dedicated to the discovery and advancement of knowledge, not merely its transmission.

1892 – Joseph M. Rice visited 1,200 classrooms in 36 cities and published a series of influential articles charging that schools and teachers "dehumanized, immobilized, and automized the children." Historians accept this event as the first major use of investigative school reporting to bring about educational change.

1894 – John Dewey arrived at the University of Chicago and began working out new ideas for America's schools.

1902 – Joliet Junior College, inspired by Illinois college presidents and high school principals, started operation with 22 students. The junior and community college movement was on its way.

1907 – Peak year of mass migration to the United States, a movement which brought 46 million immigrants between 1820 and 1974. "The common school changed the immigrant, but the immigrant altered the school, too," says historian David B. Tyack.

under *Brown* v. *Topeka* for decision by the Supreme Court.

Resistance to the Court's integration orders was the first response in the South. Resistance remained massive and stubborn for years. Yet, year after year, large numbers of Southern and border school districts worked out successful plans for ending their dual schools. (Louisville, Kentucky, and later Tampa, Florida, have been cited as shining examples of successful integration.)

Neither riots, parent protests, violence, nor legal maneuvers on state or local levels have halted the march of integration. By mid-1970 government figures showed that although black students were "at various levels of isolation," fewer than 10% of America's 45 million youngsters were in 100% black or other minority schools.

12. Uncle Sam – Big Partner in Education

1965 – Congress enacted the Elementary and Secondary Education Act (ESEA), called "the most significant commitment to education ever made by any national government."

When President Lyndon Johnson signed the ESEA on April 11, 1965, he said: "No law I have signed or ever will sign means more to the future of America." Educators, for the most part, have agreed. The ESEA began a new era of massive federal aid to education. On its tenth anniversary, educators said that under the ESEA American education was on its way to a second decade of revolutionary changes.

The ESEA's $17 billion in 10 years has provided new schooling opportunities for children of the poor, encouraged new ways of teaching and using instructional tools, expanded library facilities, promoted research, and strengthened state departments of education. The ESEA has been amended and expanded year after year. Its basic principles continue today under the Education Amendments, which are the main means for channeling federal dollars to state and local school systems.

Federal dollars, and other resources, have gone to America's public schools for 200 years. When land grants were no

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1916 – Educators, impressed with methods used by organized labor to protect its interests, set up the American Federation of Teachers in Chicago. Now affiliated with the AFL-CIO, the labor-oriented teachers are still a small group (300,000) compared to the NEA. But the AFT's use of strikes and collective bargaining have pervaded the entire profession and changed the NEA.

1916 – Lewis M. Terman published *The Measurement of Intelligence*, and historian Ellwood Cubberley said, "We are now able to give each child an intelligence rating, or intelligence quotient." The age of the I.Q. was on.

1917 – Congress enacted the Smith-Hughes bill and appropriated $1.7 million for promotion of home economics, agricultural education, and training for trades and industries. President Woodrow Wilson applauded the act.

1918 – The Cardinal Principles of Secondary Education were born. The NEA Committee of Ten published what became its most famous report, calling for reorganizing secondary education to bring it in tune with the twentieth century.

1936 – The U.S. Department of Agriculture began providing schools with surplus farm commodities for school lunches. By 1976 the value of food donated to schools by the federal government totaled nearly $2 billion a year.

1941 – The Progressive Education Association completed its much-discussed Eight Year Study. It showed that progressive methods and curricula gave students a slight edge for success in college; it also helped liberalize (somewhat) requirements for college entrance.

1944 – President Roosevelt signed the Servicemen's Readjustment Act, which Congress had passed unanimously. It ushered in an educational movement of vast scope.

1946 – In post-war euphoria, the United States joined the United Nations Educational, Cultural, and Scientific Organization. Schools stepped up their education for international understanding. And educators hoped that these efforts, along with Unesco's programs, would contribute to peace and security.

1950 – At midcentury American educators launched or intensified the use of teacher aides, business/education days, teaching machines and other more mechanical devices, individualized instruction, mass testing, educational parks, citizens' advisory committees, program budgeting, performance contracting, vouchers, and alternative schools. "Innovation" became the order of the educational day.

1952 – The University of Illinois Committee on School Mathematics began fashioning a new mathematics curriculum. The action inspired curricular revisions in science, social studies, and the language arts. One aim: to de-emphasize facts, emphasize concepts.

1954 – The U.S. Supreme Court ruled unanimously that segregation of black and white students in public education at any level was unconstitutional.

1963 – In a decision which still remains controversial, the U.S. Supreme Court ruled (*Abington* v. *Schempp*) that laws requiring prayer recitations in the public schools were unconstitutional.

1965 – Congress enacted the Elementary and Secondary Education Act (ESEA), called "the most significant commitment to education ever made by any national government."

1970 – The U.S. Supreme Court ruled that the quality of a child's education cannot be dependent on the wealth of a local school district. The case, *Serrano* v. *Priest*, shook the foundations of traditional local school support.

1971 – A Magna Charta for the retarded? In a widely hailed decision, the Pennsylvania State Supreme Court ruled that the educational needs of the mentally retarded may not be ignored.

1972 – Congress created the National Institute of Education, and for the first time educators utilized the resources of a federally financed agency totally devoted to research into major problems of teaching and administration.

1974 – The outlay for all types and levels of American education passed the unprecedented sum of $100 billion a year.

promoted research, and strengthened state departments of education. The ESEA has been amended and expanded year after year. Its basic principles continue today under the Education Amendments, which are the main means for channeling federal dollars to state and local school systems.

Federal dollars, and other resources, have gone to America's public schools for 200 years. When land grants were no longer feasible, Congress used cash. In 1917, with a modest $7 million appropriation, Congress virtually started up vocational education through the Smith-Hughes Act. Congress used other resources to aid education. After each of the World Wars, Congress donated surplus property worth millions to schools and colleges. Surplus farm commodities became the basis of the federal school lunch programs starting in 1936.

When, suddenly, in 1958, the Russians launched their first rocket into space, a Sputnik-scared Congress rushed through the National Defense Education Act. Congress wanted more and better science, math, and foreign language courses, fearing the Russians might outeducate us as they had outdistanced us in space.

Despite Uncle Sam's generosity to America's schools and colleges, some school people and citizens wanted more. Bills for more ample federal aid to education showed up in Congress each year. Lobbyists, supported by blocs of teachers and the public, waged campaigns for their enactment. Yet for more than two decades (1945–1965) scores of such bills died in Congress. Main foes were church leaders, taxpayer groups, states' rights advocates, and those who feared federal control of education or education itself.

The ESEA broke the logjam. It diffused the church/state issue and bypassed the controversial formulas for giving aid to school systems. It did so simply by focusing on the needs of children from poor, black, or "culturally disadvantaged" families. The main part of the ESEA, called Title I, has become famous for its help in educating the poor in big-city ghettos as well as in the hills and hollows of Appalachia.

Side by side with Title I grants came a flood of other types of assistance to America's schools. Today, Congress supports programs for the education of the handicapped, the gifted, children who speak a non-English language at home, and children from migrant and Indian families.

The curriculum, textbooks, libraries, school statistics, research, teacher training – these and others are the objects of federal help. The "right to read" and career education are current major interests of the federal government. The U.S. Office of Education and related education agencies are operating more than 120 different programs for schools and colleges at an annual cost to the federal treasury of some $12 billion. This is about 10% of the total spent for public and private education. Some say it is too much; others that it is not enough.

Epilogue

For the Bicentennial, federal statisticians took a close look at our schools and colleges and reported their findings in *The Condition of Education, 1976*. They start with a striking fact: Cost, bias, lack of educational resources, and sheer neglect kept most inhabitants of the new republic from any type of schooling. Today nearly every third person is enrolled in a class, ranging from nursery school to postgraduate programs. Today's legion of learners and scholars, some 62 million strong, is more than the entire 1890 U.S. population.

Four indicators reveal the distance we had to cover to reach this point:

– One hundred years ago fewer than 35% of all youngsters between the ages of 5 and 17 were attending school on a regular basis. Today, nearly 90% are attending daily for 180 days a year. This is a legacy from that weak Massachusetts law requiring attendance of but a few weeks a year.

Elizabeth Peabody

– One hundred years ago 3- and 4-year-olds were not considered likely to gain much from schooling, even by such enthusiasts for early childhood education as Susan Blow and Elizabeth Peabody. Enrollment in prekindergarten programs has steadily increased over the years and has taken a sharp spurt since 1964. Today more than 1.5 million children, or 21% of this population group, are in prekindergarten programs.

– Some of the colonies supported evening schools for a few brave souls who wanted to learn reading, writing, and figuring. Throughout our history, men and women over 18 have been attracted to part-time study in lyceums, chautauquas, Americanization schools, extension and correspondence courses. During the past five decades, adult education enrollments have pushed ever upward, and today some 18 million Americans are engaged in one or more adult education activities.

– Emma Willard and Mary Lyon would no doubt be impressed by the opportunities for women interested in higher education. Of the 11,323,000 students who made up the 1975 opening fall enrollment in all colleges and universities, more than five million were women. In 150 institutions of higher education the chief executive officer was a woman. This latter fact does not impress some individuals seeking more policy- and decision-making roles for women in education. They look to Title IX of the Education Amendments of 1972 to help achieve their goals. Title IX is the federal government's main effort to put an end to sex bias in education, and it has led educators at all levels to reexamine sexism in educational practices.

The increased number of students at all levels has required ever larger expenditures for education. Every generation has grumbled about it but paid. The United States today spends $120 billion a year for all educational efforts – not quite 10% of the gross national product. Since 1929, expenditures for formal education have ranged from 3% to no more than 10% of the GNP, and this is one reason that, despite taxpayer and parent complaint, we have successfully footed the school bill year after year.

Despite intervention of the federal government in education, its share of support for all school programs has been traditionally low, well below 5% of total outlay. Only in the last decade have there been substantial increases, result-

Photo: Reproduced from the collection of the Library of Congress

"I pledge allegiance to the flag. . . ." The Oath of Allegiance in a small Southern school, c. 1940.

ing in a 10% federal share by 1975. But consider what the second partner, the state governments, have done for education since that day in 1795 when New York first distributed $100,000 in school aid to its counties: State sources account for $41 billion a year – the largest share of expenditures for all governments. Local support has begun a long, slow decline, as the federal and state governments assume a larger share of the school burden.

What is America getting in return for its investments in education?

The product wasn't always appreciated by all people, nor have all judged it to be of superior quality. That Johnny and Jane can't write, read, do the old or new math, or even buy a can of tuna fish economically have been persistent complaints, as summaries of public opinion polls, on the one hand, and achievement scores, on the other, have shown. But the gross educational product is huge and diverse. As *The Condition of Education* indicates, it includes unprecedented programs for career education, for the handicapped, the bilingual, the gifted, and offerings for the very young and the old. For the first time in the history of any nation, children of the poor get special teaching, special help, and special services. Classrooms equipped with a dazzling array of instructional materials teach not only the basics and the traditional, but also new math, revised social studies, reconstructed language arts, and a new type of physical education.

"A common indicator of the extent to which we have achieved the major goal of free universal basic education is the high school graduate rate," says *The Condition of Education*. Here we see a phenomenal performance. More than 75% of the youngsters of high school age today get high school diplomas. And beyond the high school diploma? Only about one-fourth of the number of individuals who might be considered eligible received college degrees in 1974, and the future rates of college graduation may hold steady or decline. But as the statistics show, we have just been through a period of spectacular increases in the number of bachelor's degrees awarded: from 186,500 in 1940 to 977,000 in 1974.

After its massive review of American education, *The Condition of Education* concludes in its dry statistical voice: "In 1975 only 30% of the public expressed a great deal of confidence in persons running educational institutions, a drop of 10% from the year before. . . . Despite dissatisfaction with education, the public remains committed to its support. Close to 50% of the public believe that too little was being spent for education. . . ." And this despite the fact that we contribute well over $100 billion annually to its support. □

Photo: The Bettmann Archive

Changing Roles of Special Education Personnel

"Historical Perspective"

The history of education for exceptional children, if told from their point of view, is a simple story of massive neglect, denial, and rejection. For every Laura Bridgeman and Helen Keller, tens of thousands of other children with handicaps were doomed to constricted lives because it was believed that they could not be taught or were not worth teaching. In a sense, the development of special education can be recounted as an assault with a handful of dedicated pioneers: Gaspard Itard (1774-1838), and his student Edouard Sequin (1812-1880) who began the study and training of mentally deficient children; Samuel G. Howe (1801-1876), who started the first school for the blind in the United States and proved by his work with blind and deaf Laura Bridgeman that the blind could be educated; Thomas H. Gallaudet (1787-1851), who organized the first school for the deaf in this country; and Louis Braille (1809-1852), the inventor of the system of writing that bears his name.

Formal arrangements for the education of exceptional children in the United States can be divided into four periods as follows:

Rough Time Periods	Modal Programs Format
1. Late 19th Century	Residential School
2. Early 20th Century	Prototype Community-based Programs, the special class and special school
3. About 1945-1970	Explosion of the simple "special class" model
4. Beginning about 1970	Negotiations for more inclusive arrangements: The period of "least restrictive alternative," "mainstreaming," or "progressive inclusion."

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Brief reviews of each of the first three periods are given below; thereafter, the main body of the paper deals with new and current trends which appeared rather sharply in the early 1970s and which promise to persist for some period of time.

Nineteenth Century: Residential Schools

The first institutions organized in the United State for the education of blind, deaf, and retarded children were residential; they became the models and set the dominant early pattern for special education in the United States. The institutions tended to be narrowly categorical in orientation and, since colleges and universities were not yet involved in relevant professional training programs, teachers were necessarily prepared for their specialized work by on-the-job training. The roles of teachers, therefore, were defined categorically as of the "blind," the "deaf," or the "retarded."

Although most states established residential schools for the children of residents and numerous private schools were also founded, not all exceptional children could be accommodated in the institutions. The facilities were limited in the state-operated schools and the private ones were too expensive for many families. Some parents considered the removal of their children more onerous than depriving them of educational opportunities. And children with multiple handicaps were often not eligible for admission to any school.

Residential schools are still in existence but more and more they are being used only for selected profoundly handicapped individuals who are thought to be best served there.

Early Twentieth Century: Community Prototypes

Some distinctive community-based programs for the education of exceptional children began to appear at about the turn of the Century as special classes and public day schools. In their earliest forms, these programs were dependent on residential schools for leadership, curriculums, and teacher preparation. Gallaudet College, for example, which was then serving deaf children, started a teacher-training program in the 1890s (Craig, 1942), and in 1904, the Vineland Training School in New Jersey began summer training sessions for teachers of retarded children (Hill, 1945).

At their best, these early community programs never more than tolerated the exceptional children and the movement developed slowly. For the first half of the Twentieth Century, most handicapped children were in schools for minimum periods only. Some children were forced to repeat grades until they became embarrassingly oversized in comparison with their classmates. When "special" classes of "opportunity" rooms were instituted for handicapped children, the labels often took on derogatory connotations.

Until comparatively recently, of course, public schools had never seriously tried to serve all children, and especially not those who were difficult to teach. Indeed, most children attended school long enough to acquire a basic education, during the first decades of this century. Consequently, school systems were not prepared physically, philosophically, or financially to operate far-reaching programs for exceptional children. Special education is costly be definition because of its emphasis on individual problems and needs. When school budgets were limited, as during the Depression of the 1930s in particular, special class programs were not expanded.

The rather pervasive neglect of atypical children which was evident well into the Twentieth Century was perhaps not a deliberate and callous deprivation but, rather, an outgrowth of certain ideas which were pervasive at the time. Sloan (1963) attributed the educational lethargy of the early 1900s to the widespread public misinformation on genetics and criminal tendencies, and to the accepted attitude that mental retardation was generally a hopeless condition. According to Zigler (1969), ideas about the "rigidity" of the retarded, which emerged during the 1930s, tended to become diffused in the public consciousness and to further delay and deny such children opportunities for training. Delay and denial were experienced by most handicapped children of all varieties.

Nevertheless, during the 1920s and 1930s, formal programs to train teachers for the handicapped were instituted in a few universities, first at Wayne University and The Teachers College of Columbia University, and then at Eastern Michigan University at Ypsilanti and the University of Wisconsin at Milwaukee. The roles for which teachers were prepared were mainly modeled after teachers of the residential schools.

1945-1970: Explosion of Simple Models

As if to make up through one large effort the neglect of centuries, a remarkable surge of activities in behalf of handicapped

children began shortly after World War II. Our largest states launched programs to serve the handicapped in the public schools on a broad scale and numerous colleges and universities organized programs to train teachers in special education.

The change that occured over the quarter of a century is best reflected in statistics. In 1948, 442,000 children were enrolled in special education programs, in 1963, 1,666,000 (Mackie, 1965), and, according to estimates of the Bureau of Education for the Handicapped, during the 1971-72 school year, 2,857,551 handicapped children were receiving special education services. These data reflect more than a six-fold increase.

The increase in training programs for teachers of the handicapped was almost as great. About 77 colleges and universities were providing training sequences for special education teachers in one or more categories in 1948; by 1954, the number was 122 (Mackie & Dunn, 1954), and by 1973, over 400. The rapid increases in college programs in the 1950s and 1960s reflected the new involvement of the federal government in support of training efforts in special education. In addition to special education teachers, school systems were employing growing numbers of administrators and supervisors for the rapidly proliferating programs of special education which were spreading across more and more categories of handicaps.

Although it is impossible to determine all the influences which brought about the sudden development of public school programs for exceptional children, three can be recognized. They were new on the educational scene.

1. Parents of handicapped children formed a number of organizations, such as the National Association for Retarded Children* (chartered in 1950), which became socially and politically active. They influenced state legislatures and the Congress. Because of the activities of the politically aggressive parent organizations, the federal government established a national program in the field of special education. In 1957, supports were provided for research and leadership training in the area of mental retardation; in 1963, the supports were extended by Congress to cover virtually all areas of handicaps; and in 1967, the new Bureau of Education for the Handicapped was established to administer the burgeoning new programs.

*Now the National Association for Retarded Citizens

2. Many state legislatures, in response to pressures from parents' groups, passed new legislation that mandated instruction in the schools for many categories of exceptional children. The legislatures provided excess cost aids in one form or another to local school districts that launched new programs. Because of the financial assistance provided by state legislatures, and later by the federal agencies, many school districts found that the operation of special education programs not only permitted the provision of services for exceptional children but also helped to improve the services for the school population as a whole.

3. As the nation became aware of and made necessary provisions for the rehabilitation of World War II and Korean War veterans who had been seriously injured, facilities in Veterans Hospitals were enlarged and new research programs to further aid the veterans were established in various institutions and agencies. In colleges and universities, departments of clinical psychology, speech pathology, and physical medicine were expanded through federal rehabilitation funds and the influences of their investigations in behalf of veterans spread to the research and training being carried on for exceptional children. For example, because blinded veterans rejected isolation and dependency as their fate, programs for mobility and occupational training were begun for them at Veterans Hospitals. Some of the national leaders who participated in carrying out these programs were also involved with schools. Consequently, some transference of expertise took place which was reflected in programmatic developments for blind children. Many school systems found that these children could function in day school programs based on a resource room model, that is, programs in which the children spend only part of the day away from the regular classroom. These programs forced serious examination of the past practices of automatically referring blind children to special schools or classes.

It should be noted that the sheer quantitative leap in programing for exceptional children between 1945 and 1970 cannot be attributed to any great technological or ideological advances. There were some innovations, such as the development of low-vision and individual electronic hearing aids, but they are of limited account in the context of massive change. In the main, the period can be said to have been one of rapid development based on simple models of the past. The teachers who were prepared in the 1950s and 1960s were, in most cases, prepared for "special classes" of the familiar model of earlier decades.

This is not to imply that the two-and-one-half decades were totally barren of new ideas; in fact, some of the trends that are discussed in the next section were generated during these important years. A few examples should suffice.

As part of the studies stimulated by President John F. Kennedy in the mid-1960s, a great many U. S. special educators were enabled to investigate developments in the field in other parts of the world. Visitors to the Scandinavian countries encountered what is known as the process of "normalization," that is, educating the handicapped in and for the "normal" environment of the non-handicapped to the maximum feasible extent. This viewpoint requires major development of community-based support systems for the handicapped.

The boundary lines of the categories of exceptional children began to be seriously examined and strong pressures were developed to extend special education services to children who were obviously very much in need of specialized forms of education but were yet unserved. The case which was argued most strenuously in the 1950s was whether schools should serve the "trainable" as well as the "educable" retarded.[1]

Special education categories were increased to provide services to children who do not fall into any of the traditional special handicap classifications. In the last 1960s, the largest increases in special education enrollments were in the area of "learning disabilities," an area that many observers consider not to be a handicap category in the traditional sense but, rather, a very diverse set of residuals from other categories. The inclusion of the category in special education's province was welcomed by many persons, nevertheless, because it represented a move away from the overly simple medical and psychometric models of categorization, which have increasingly come under attack, and permitted the extension of service to neglected children, even if the definitional problems provided a major professional embarrassment.

Overall, one characteristic of the post-war period may be of the greatest importance for the future: For the first time diverse programs of special education were consolidated in single institutions. For the first time, it became possible to look at and to work across all categories and to consider how they might be related to each other. That consolidation began to be reflected in the research and training programs of many colleges and universities.

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[1]For the famous debate between I. Ignacy Goldberg and William M. Cruickshank, see the NEA Journal for December, 1958. Recent judicial and legislative mandates relating to the schools' responsibility to all handicapped children have made this debate of historical interest.

During the busy period of the 1960s the long-standing patterns of special education began to draw their share of skepticism and even hostility. Although blessed with rapidly increasing amounts of money, the field did not generate serious evaluation of its programs. When evaluation studies were undertaken, as in the 1960 series of mental retardation special class "efficacy" studies, the evaluation methodology was usually at least as doubtful as the practices purported to be evaluated.

Skeptical attitudes were expressed by some special educators, such as Dunn (1968) and some people outside of the professional ranks. For example, the following comments were offered to a group of special education administrators in 1970 by Congressman Albert Quie:

> One of the great problems of being in political office these days is that there is very little that is sacred. One was generally always safe being for motherhood, the flag, apple pie, and handicapped children. But today with the women's liberation movement and the pill, motherhood is being challenged, the flag seems to be continually getting into trouble, apple pie is being tested by the Food and Drug Administration, and I am afraid that handicapped children might not be too far behind. If the public is going to significantly invest in the education of the exceptional child . . . (it is necessary) . . . to establish clear objectives for the programs, to explain to the public what its dollars will buy, and to demonstrate that the objectives have been achieved. (Quie, 1970)

The 1970s: Negotiating for more Inclusive Arrangements

Most of the remainder of this paper consists of a detailing of the period of the 1970s and a few extrapolations into the future. I believe that quite fundamental changes are in process in the 1970s; they involve a renegotiation of boundaries between regular and special education and between community-based and residential institutions. Perhaps the period can be summarized under the rubric "least restrictive alternative" or "mainstreaming," in a broad meaning, or "progressive inclusion."

But before proceeding beyond the brief historical statement covering the first three periods and leading into the current scene, a brief summary conclusion is in order. The theme in the brief historical sketch above is that the whole history of education for exceptional children can be told in terms of one

steady trend described as "progressive inclusion." Handicapped children have come, in a period of less than two centuries, from total neglect, first into isolated residential schools--for just a few - then into isolated community settings--mostly in the form of special classes--and now into more integrated arrangements for many children. At this moment we are in the midst of what will undoubtedly be recorded in future histories as a remarkable reversal of a negative cascade by which handicapped children were sent off to isolated classes and centers. The agendas of local school boards all across the country in the early 1970s reflect the influx to the community of seriously handicapped children, earlier sent off to hospitals and residential centers; and on the desks of virtually every school principal are difficult questions concerning the accommodation of more exceptional children in regular classrooms.

The current mainstreaming trend is not, I believe, a minor pendulum swing or a temporary enthusiasm. There has been a quite steady, progressive, inclusive trend in special education from the beginning: unconcern —— to distal —— to proximal arrangements. It would be naive simply to assume a straight-line, uncomplicated, and continuing trend; but there are fundamental forces at work, I believe, which support the general trend toward more inclusive arrangements for the education of children who have special needs. Administrative arrangements are seem increasingly as dependent variables, as modifiable to meet individual human needs, rather than as well-designed, impermeable niches for children diagnosed or "carved by nature" to fit a particular slot.

SOCIAL AND ETHICAL IMPLICATIONS OF TERMS AND LABELS

by
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There is a population of school aged students who require special assistance during their school years. In order to provide assistance to those who teach these children, certain labels and terms have been applied to characteristics found in the special child. However, it must be remembered these are children who have problems, not problem children. There is appropriateness in the use of these terms so long as one keeps in mind the social and ethical implications these terms and labels have, not only for the child, but for the family and the community in which the child lives. This unit provides information regarding the characteristics of handicapping conditions and provides skill in recognizing the implications and stigmas of deviances from what is considered the "norm."

Teacher Trainee Outcomes

The teacher trainee will be able to recognize the rationale for the use of terms and labels and will be instructed in how to assist the school age child by lessening the stigma of labels. Further, the teacher trainee will understand these are problems the children have and that they are not problem children.

Instructor Information

Prerequisites:

It would be beneficial if a basic course in psychology or educational psychology has been taken by the students prior to this unit. This will have presented them with such conceptual constructs as "intelligence," "human growth and development," and "learning," which will enable better understanding of the materials presented herein. Other prerequisites are not deemed necessary.

Organization:

Nationally accepted terms and labels are presented along with reading material from published books as the basic content for this unit. Teacher trainees are required to prepare lists of the types of children identified as exceptional and therefore subject to special programs. Further, they are asked to prepare a critical appraisal of the assigned readings. Class discussions complete the activities for this unit.

Content Overview:

The readings provide descriptions of the stigmas, and deviances with which the special or handicapped individual must deal. Further, current definitions are given for each type of major handicap dealt with in the public schools. Social and ethical dimensions of labels are given consideration in the material presented.

Suggestions for Teaching:

The instructor will find that this unit can be completed in two class sessions of one hour each. The first session can be devoted to the terminology assignment. This hour should be devoted to as much class participation as possible. The second hour can be spent in bringing the first hour to a summarization and, by having assigned the other reading previously, a lecture/class participation session will suffice to enable

the students to learn and master skills in understanding the social and ethical implications of terms and labels.

Suggestions for Evaluation:

Class participation, performance in groups (if used), and an analysis of the written assignment can be used by the instructor to evaluate the skills and understandings gained by the students.

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Prospectus

The analysis, evaluation, and selection of terms and labels to be used in identifying a student need to be given serious consideration. Exceptional learners have sufficient problems without attaching a misleading label which only compounds the problems by adding new ones of a linguistic and categorical origin which will, for the most part, remain with that handicapped individual for life. One needs to be aware of the full impact of the attachment of terms and labels before deciding to label. This unit, therefore, provides the type of information which leads to a clearer understanding so that those who need to use terms and labels will apply them in the most appropriate manner possible. Another goal is to minimize the use of terms and labels in order to reduce societal stigmas for the handicapped.

Teacher Trainee Objectives	Enabling Activities
1. The teacher trainee will list those terms and labels which are applied to "handicapped children."	1. Reading 1: CEC definitions as used in the United States. 2. Class discussion of lists.
2. The teacher trainee will prepare a critical appraisal of the social and ethical implications of being "handicapped."	1. Reading 2: Long. 2. Preparation of paper due at conclusion of class session. 3. Discussion of the critiques prior to submitting of papers.

Readings

"Definitions," *Policy Statements and Administrative Procedures*, Reston, Virginia: Council for Exceptional Children, September, 1977, pp. 1-6.

Long, Kate. *Johnny's Such A Bright Boy, What A Shame He's Retarded*. Boston: Houghton Mifflin Company, 1977, pp. ix-xv, 12-16, 29-32.

Policy Number	Policy Statements and Administrative Procedures	Comments
100	DEFINITIONS It shall be the policy of each local education agency to provide a clear written description of each type of exceptional child for whom the agency must provide an appropriate education. Definitions of exceptionalities, whether categorical or noncategorical, must correspond to State and Federal legal provisions.	The definitions used in this manual have been verified by 280 local and intermediate education agencies as appropriate for use. The origin of the definitions is a combination of the State Educational Records and Reports Series, Handbook V (U.S. DHEW, 1974); The Council for Exceptional Children delegate approved definitions; and specific disability definitions appearing in selected Federal statutes.
101	NONCATEGORICAL DEFINITION Exceptional children are those who, because of certain atypical characteristics, have been identified by professionally qualified personnel as requiring special education planning and services. Exceptional children are identified on the basis of (a) physical, health, or sensory handicap, (b) emotional handicap or behavioral problem, and (c) observable exceptionality in mental ability, i.e., mentally gifted and mentally retarded. Some exceptional children have more than one type of exceptionality.	Many states are moving toward noncategorical descriptions to define handicapped children by their special educational needs, rather than by specific handicapping condition. The trend is toward looking at the child in terms of what the education needs might be as opposed to labeling the child and then fitting the label to a program. P.L. 94-142, however, requires data to be reported by disability of child.
102	BLIND Blind individuals are those who are sightless or who have such limited vision that they must rely on hearing and touch as their chief means of learning.	Handbook V

"Definitions", Policy Statements and Administrative Procedures, Council for Exceptional Children. September, 1977, pp. 1-6. Reproduced by Permission.

Policy Number	Policy Statements and Administrative Procedures	Comments
103	COMMUNICATION DISORDERED Individuals with communication disorders are those who exhibit an impairment in speech and/or language (including impaired articulation, stuttering, voice impairment, and a receptive or expressive verbal language handicap) that is sufficiently severe to adversely affect the performance of an individual in the usual school program.	Handbook V This is not to be confused with a language or communication difficulty arising from lack of experience with the language of instruction. Speech and language deviations expected to diminish significantly or disappear in the course of the child's normal development are not included.
104	DEAF Individuals who are deaf are those whose hearing is extremely defective so as to be essentially nonfunctional for ordinary purposes of life.	Handbook V
105	DEAF-BLIND Deaf-blind individuals are those who have been diagnosed as having both hearing and vision handicaps, the combination of which causes severe communication and other developmental and educational problems. 105.1 Descriptors of children in this category shall minimally include the definitions for both deaf and blind (See POP 102, POP 104).	Handbook V
106	DEVELOPMENTALLY DISABLED The term "developmental disabilities" refers to a disability attributable to mental retardation, cerebral palsy, epilepsy, or other neurological condition of an individual found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age eighteen, which has continued or can be expected to continue indefinitely and which constitutes a substantial handicap to such individual.	P.L. 91-517. Most local and intermediate education agency administrators responded to this definition by recommending that it not be used by public schools. Comments reflected a duplication and confusion when this definition is used.

Policy Number	Policy Statements and Administrative Procedures	Comments
107	EMOTIONALLY DISTURBED/BEHAVIOR DISORDERED Emotionally disturbed/behavior disordered persons are those individuals diagnosed by professionals as having severe emotional conditions which interfere with the learning process, relationships, and/or personal adjustment as evidenced within school settings. The person's primary difficulty is emotional/behavioral.	While the Federal definition does not include "Socially Maladjusted", many administrators indicated that in practice, this term is incorporated to broaden the definition of emotionally disturbed.
108	HARD OF HEARING Individuals classified as being hard of hearing possess slightly to markedly defective hearing, as determined by their ability to use residual hearing in daily life, sometimes with the use of a hearing aid.	Handbook V
109	HEALTH IMPAIRED Individuals with health impairments are those whose educational progress is restricted because of limited strength vitality, and alertness due to chronic health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes or other illness.	Handbook V
110	LEARNING DISABLED Learning disabled individuals are those who exhibit a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language. These disorders may be manifested in difficulties with listening, thinking, talking, reading, writing, spelling, or arithmetic. They include conditions which have been referred to as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, developmental aphasia, etc	This does not include learning problems which are due primarily to visual, hearing, or motor handicaps, to mental retardation, emotional disturbance, or to environmental disadvantage.

Policy Number	Policy Statements and Administrative Procedures	Comments
111	MENTALLY GIFTED The "mentally gifted" include individuals whose potential is so high or whose level of mental development is so far advanced that they have been identified by professionally qualified personnel as needing additional educational opportunities beyond those provided by the usual school program if they are to be educated to the level of their ability	Handbook V Fifteen States currently include gifted and/or talented in special education legislation. Services are not mandated as part of P.L. 94-142.
112	MENTALLY RETARDED The classification "mentally retarded" refers to individuals whose significantly subaverage general intellectual functioning exists concurrently with deficits in adaptive behavior, and is manifest during the developmental period.	American Association on Mental Deficiency (AAMD) definition. Severity usually determines classification into various performance levels: Mild — to correspond with — EMR Moderate — TMR Severe — SMR labels
113	MULTIPLY HANDICAPPED Multiply handicapped individuals are those who have a combination of, two or more handicaps which produce multiple learning, development and/or behavioral problems. 113.1 Descriptions of children classified as multiply handicapped shall minimally include the definitions for each appropriate category. (See POP 102, POP 103, POP 104, POP 105, POP 106, POP 107, POP 108, POP 109, POP 110, POP 112, POP 114, POP 116.)	
114	ORTHOPEDICALLY HANDICAPPED Orthopedically handicapped individuals are those who exhibit a musculoskeletal condition of a type which might restrict normal opportunity for education or self support. The term is generally considered to include individuals with impairments caused by congenital anomaly, disease, and accident.	HANDBOOK V

Policy Number	Policy Statements and Administrative Procedures	Comments
115	TALENTED The "Talented" include individuals identified by professionally qualified personnel as being capable of high performance in one or more areas of special competence. Among those areas of special competence are creativity, leadership ability, social adeptness, and facility in the productive and performing arts.	Handbook V Many states are moving to a more generic definiton that includes "talented" under the definition of "gifted".
116	VISUALLY IMPAIRED Visually impaired individuals are those whose vision is impaired in any of its functions, as manifested by imperfect depth perception, faulty muscular action, or poor peripheral or central vision.	Handbook V

Policy Number	Policy Statements and Administrative Procedures	Comments
200	SCHOOL AGE CHILDREN It shall be the policy of each education agency to guarantee a free appropriate public education for every exceptional individual within the legal jurisdiction of the agency who is between the ages of three through twenty-one.	P.L. 94-142 mandates a free public education for all children three to eighteen by September 1, 1978, and for all children three through twenty-one by September 1, 1980.
201	PRESCHOOL AGE CHILDREN Dependent upon State regulations, education agencies may be responsible for providing appropriate educational opportunities for children ages birth through five.	P.L. 94-142 carries a special incentive grant aimed at encouraging the States to provide special education and related services to its preschool handicapped children. Each handicapped child in the State aged three to five who is counted as served will generate a special $300 entitlement.
202	SECONDARY/POST-SECONDARY AGE Depending on State regulations, education agencies may be responsible for providing free appropriate educational opportunities for individuals aged eighteen through twenty-five. Some limitations exist, in the form of a qualifying clause, that extends the responsibility of the education agency to those individuals in this age range who have "not obtained a high school diploma or its equivalent."	With respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, the requirements of P.L. 94-142 shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State. For further information regarding policies for Vocational education the reader is referred to the Vocational Education Policies Manual to be available from The Council for Exceptional Children in April, 1978.

were concentrated geographically — on the mountain behind Stockdale, for instance, in Squirrel Hollow just outside Davidson, and in the town's low-rent district below the hill on which Stockdale stood. No more than five of the children in the program lived in the affluent middle-class section of town. The middle-class children had problems too, but their parents, as a rule, wouldn't allow them to be placed in special ed, as it existed then.

Maggie was feeling around for the calm of the evening. It wasn't there. A few lights came on in the town near her house beside the train station. A little beyond the house, the river wound by Dummy Tech. She threw a rock at Dummy Tech and missed. It was over a mile away.

When Maggie first took the supervisor's job, it had seemed strange that one county (school population 2500) could produce almost 200 retardates. She had speculated about things like malnutrition. But, as soon as she began to spend time with the kids, the theories went out the window and were replaced by a feeling bordering somewhere between anxiety and panic. She kept encountering groups of alert, lively children. The overwhelming majority came from low-income families. Many of them had not developed the vocabulary and basic concepts a child needs to negotiate a rigidly structured middle-class school. Many hadn't had the range of experience a middle-class child takes for granted. No more than fifteen of the children enrolled in special education at that time were severely handicapped, mentally or otherwise. The rest had a wide variety of correctable, frequently minor problems, so many of which, as Abigail had said, also turned up in the regular classroom.

For most people, the words "mentally retarded" summon up a far more serious picture. In Copper County and in most of the United States, retardation in practice is defined as an IQ score below seventy. Only 5 to 10 percent of over one million children classified "retarded" in the schools in the United States in 1975 were severely retarded, according to the President's Committee on Mental Retardation. The other 90 to 95 percent were supposedly "minimally" or "moderately" retarded, whatever that may mean in each school system.

Long, Kate. Johnny's Such A Bright Boy, What A Shame He's Retarded, 1977, pp. ix-xv, 12-16, 29-32. Copyright by Houghton Mifflin Company, Boston. Reproduced by Permission.

The public and many educators don't make these distinctions. The 90 percent often have to bear the same stigma and aversion commonly and tragically directed in our society toward the severely retarded child. Saddest of all, the so-called retarded children don't make these distinctions either. They don't tell themselves, "Oh, I'm only minimally or moderately retarded." They think, "I'm retarded, I'm different, I'm second-rate." The best academic program in the world couldn't erase the humiliation they feel and often express.

What is retarded? Specialists have been trying to define that category for at least the past century. The problem has been that, like most categories, the definition keeps getting broader and broader to include more and more children. An array of terms has been developed, terms within terms. Ronald W. Conley summed up the debate in his book *The Economics of Mental Retardation*. "Many terms have been used as synonyms for 'mental retardation.' Such an abundance of terminology would be of little consequence if there were general agreement as to the precise meanings of the different terms. Unfortunately, there is not.

"To illustrate, the terms 'mental retardation' and 'mental deficiency' are frequently used interchangeably by modern authors. But the term 'mental deficiency' has also been used to describe the inadequate *social* functioning resulting from 'mental retardation.' More often, the two terms are distinguished by using the term 'mental retardation' to 'refer only to those whose educational and social performance is markedly lower than would be expected from what is known of their intellectual abilities,' and by reserving the term 'mental deficiency' for those conditions 'of mental arrest resulting in a social inadequacy which is not amenable to fundamental improvement through education and experience and any known treatment.' Others have further restricted the term 'mental deficiency' to include only those cases 'with demonstrable neurological damage or pathology.' When a distinction is made between 'mental retardation' and 'mental deficiency,' the term 'mental subnormality' is sometimes used as a general term to cover both cases."

Such an array of opinions about terms is mind-fuzzing, especially since the word "retarded" could be applied to all the children at

Gateway School, as well as to the profoundly retarded child. On the more technical end, the American Association of Mental Deficiency provides a medical classification system for mental retardation that included nine major categories, 55 subclassifications, and over 100 sub-subclassifications.

The two categories used in Copper County were known as EMR and TMR. EMR means "educable mentally retarded." TMR means "trainable mentally retarded." The children so categorized are also referred to as "educables" and "trainables." There are extensive lists of "characteristics of the EMR" and "characteristics of the TMR" in many textbooks. Callie Peale was an EMR. Her characteristics supposedly are there in the textbook, like the characteristics of a car with standard parts.

Reality is much less complex than lists of characteristics. An EMR, according to the regulations of many states, is a person who scores between 70 and 50 on a "properly administered" IQ test. Some states use 75 as the cut-off point. Others use 79. A few states don't have EMRs. They have eliminated the idea. A TMR, in practice, is often a person who scores between 30 and 49 on an IQ test.

The President's Committee on Mental Retardation has added another term to those applied to children considered retarded in the schools. In 1969, they published a jarring report entitled "The Six-Hour Retarded Child." "We now have what may be called a six-hour retarded child," the report began, "retarded from nine to three, five days a week, solely on the basis of an IQ score, without regard to his adaptive behavior, which may be exceptionally adaptive to the situation and community in which he lives."

Most six-hour retarded children are officially classified EMR.

Up on the Stockdale playground, Maggie watched some children playing on the swings and seesaws. When a little girl with flying pigtails swung high in the air, Maggie caught her breath. For a split second, the child seemed to hang suspended between the river and the mountain. She sent Maggie back through the years to her own pigtails and the time of swinging "up so high, you can touch the sky."

Maggie had grown up in a county about fifty miles from Copper

County, so the area was familiar to her. Part of her county was visible from the hilltop above Davidson. There wasn't any special education in her schools back then, and severely handicapped children weren't allowed to come to school. One of her friends got polio in the fourth grade and wasn't allowed to come to school afterward, because her wheelchair wouldn't go up the stairs. It was long before the practice of including ramps in public buildings.

Maggie understood a little of Callie's desire to be "regular" at any price, since she had spent much of her own grade school career praying that the Lord would shrink her about five inches, put some fat on her bones, and make kids stop calling her "beanpole." There were also a few little hexes thrown on teachers who made everybody line up by height.

From an adult point of view, it was easy to see that being tall and skinny are by no means the worst things that ever happened to a kid. And yet the pain of being different had made it possible to identify with Callie. It would still have been hard to belittle the pain of a tall, skinny kid. Or a fat kid. Or an "emotionally disturbed" child. Or a shabbily dressed child. All those pains so often spring from the same source. It isn't the tall and skinny, it's the "being different," when different is made to be bad or shameful. When different is bad, different is painful to a child or to a grownup. Different can even cause further problems under those circumstances.

Different is a funny thing, because it's seen in so many ways. Outside school, people's parents often said, "Why can't you be like everybody else?" so that became very important. It was essential to have a red crinoline and a ponytail, to have a boyfriend, and to make good scores on the Stanford Achievement Test.

It was also important to be up to grade level. There were kids like Callie Peale in Maggie's classrooms. She remembered their confusion when the teacher asked them questions she knew they couldn't answer. She especially remembered one fourth grade girl who stood up reluctantly to answer a question, cleared her throat several times, and finally asked with a very red face if she could go to the bathroom. The whole class laughed at her, and Maggie laughed too. Somebody whispered "dumbo" and the teacher didn't say anything. A weird feeling of collaboration and comradeship shaded the entire incident.

Maggie remembered, because later that day, she got hers. The music teacher made her dance with the shortest boy in the class, who made terrified faces and muttered something about being crushed by a monster. Everybody laughed, including the girl who had run to the bathroom. She had been physically regular, so the roles were suddenly reversed. The look that passed between them stuck very clearly in Maggie's memory. Maggie was as red as the other girl had been and was thinking hard about the bathroom.

That moment taught her something. Something had made both girls ashamed to be themselves, when they didn't really need to be ashamed. The girl had laughed at Maggie, Maggie had laughed at her, both of them trying to improve their own standing by making fun of somebody else. Trying hard to show that they were regular, they laughed whenever somebody else was irregular. And it had just seemed natural to do it.

Regular is a word that gives many people trouble. It has been universally used to describe a child who is *not* in special education. The "regular" children. The implications of the word are enormous.

In Copper County, something that was not regular was irregular. Special education was separate in a bad way, so it was bad to be irregular and good to be regular. People who were irregular were punished by removal, as any kid in the school system knew, whether the grownups intended it that way or not. Callie Peale knew that. Irregular was called special, yet a kid was mortified to be special under such circumstances. Special was equivalent to "dummy" or "crazy" in the average kid's mind. So regular was better.

There were regular children, regular teachers, regular classes, and regular schools. Special children, special teachers, special classes, and a special school. If special was separate in a negative way, special was bad. So nobody wanted to be special.

Regular implies that there are a whole lot of children who fit some standard mold and are therefore more desirable people than the irregulars (who will, they hope, become regular someday). Somehow, the choice of that word doesn't seem to be any accident. It's a rather powerful label in itself.

3. Facts and Opinions

"Children who are categorized and labeled as different may be permanently stigmatized, rejected by adults and other children, and excluded from opportunities essential for their full and healthy development. *Yet* categorization is necessary to open doors to opportunity; to get help for a child, to write legislation, to appropriate funds, to design service programs, to evaluate outcomes, to conduct research, even to communicate about the problems of the exceptional child.

"Children may be assigned to inferior educational programs for years, deprived of their liberty through commitment to an institution, or even sterilized, on the basis of inadequate diagnostic procedures, with little or no consideration of due process. *Yet* we have the knowledge needed to evaluate children with reasonable accuracy, to provide suitable programs for them, and to guarantee them recognized due-process requirements.

"Large numbers of minority-group children — Chicanos, Puerto Ricans, blacks, Appalachian whites — have been inaccurately classified as mentally retarded on the basis of inappropriate intelligence tests, placed in special classes or programs where stimulation and learning opportunities are inadequate, and stigmatized. *Yet* these children often do need special assistance to manifest and sharpen their unappreciated competences."

— Nicholas Hobbs, *The Futures of Children, Categories, Labels, and Their Consequences*, 1975

THE ABILITY to cope with frustrating or complicated questions and ambiguities is a necessary tool for anybody trying to get a feel for special education today. The realization that a question can have many answers comes in very handy too. There are many possible answers and opinions applicable to nearly every child and every question. If Maggie felt confused, it was partly because she had elsewhere seen kids similar to those in the Copper County EMR classes getting along well without the retarded label and the separation. In those cases, the system had adjusted instead of segregating the child. So "retarded" was just another answer, an opinion, not a fact.

Some of the special education labels *are* facts: blindness, deafness, loss of limbs, severe retardation, severe emotional disturbance. The degree of the condition varies within each category, as does the way the individual deals with it. Each individual has a different spirit, and the handicap is only one part of him.

Thanks to the efforts of many special educators, some of the "facts" about handicaps are changing too. Down's syndrome mongolism, for instance, has been thought to be such an unchangeable fact that, until recently, doctors would commonly recommend that mothers institutionalize such children. Yet in 1976, five-year-old kids with Down's syndrome mongolism in an early intervention program at the University of Washington were making developmental gains comparable to other children their age.

Other categories are wide open to opinion: "mild retardation," emotional disturbance, learning disabilities, social maladjustment, hyperactivity, slow learner, culturally disadvantaged, and so on. The category often depends on who's looking at the child and which definition is being used. The definitions of specific categories vary from state to state, as do the means of "identifying" children for those categories. A few states don't even use categories for children considered minimally handicapped.

Many people have expressed the opinion that the category system actually keeps people from looking at the child as a person. "We've been deep into efforts to get teachers to look at each child as an individual for years now," explained James Tucker, the chief consultant to the Texas Education Agency, Division of Special Education in March 1975. "But the plain political reality at this point is that, if you want to get any state or federal funds, you've got to put labels on the children. People are so used to thinking in terms of categories that they think you're not doing anything if you aren't willing to tell them how many of these children are retarded, how many are emotionally disturbed, and so on.

"I'm resigned to it, as an unfortunate fact of life. So we do identify children in Texas with legally qualifying criteria. Once a child meets the criteria for funding purposes, however, those criteria should cease to have any influence whatsoever on his program. Ten children categorized as EMR may have ten totally different needs and need to go in ten different directions.

"Unfortunately, when people hear the term 'EMR,' they automatically want to put all those kids in one place. They think the term tells them what the child's needs are. But each child is an individual. A child who is categorized as 'learning disabled' may have needs which are very similar to those of a child who is labeled 'emotionally disturbed' or those of a child in the regular classroom. The labels say nothing about the child's educational programming needs. If we can't get rid of meaningless labels in Congress at this point, at least we should be able to get rid of them in the teacher-training institutions."

At this point, some teacher-training institutions do teach strict categories, and others are either abandoning or limiting the opinion-based categories, figuring it's a lot less risky just to describe a child in terms of what he can do and what he can't do. Going one step further, some teacher-training institutions are teaching students to look at the system around the child before deciding that the problem is in the child.

Opinions vary even more out in the schools, since most of the questioning of labels and self-contained classrooms has occurred within the past ten years. A teacher who will accept no labels can end up teaching alongside a teacher who learned brain damage and IQs as gospel in college, as well as those teachers who are trained for other fields and are teaching on "emergency." Practices vary from place to place, so that a child who is declared retarded in one school district could easily be learning disabled in the next, emotionally disturbed in a third, or be a member of a multilevel regular classroom in a fourth. A child who is seen as emotionally disturbed in a rigidly structured school system might well be seen as creative and sensitive in another. The child in a self-contained classroom in one system might well be placed in a resource program in another. The children's problems are real, but there's so much room for opinion about their nature and source.

All this division of opinion can and often does create some delicate diplomatic situations in school systems, since people who see things in different ways may all feel that their way of doing things is best for the children. Maggie loved kids and teaching, but she wasn't the best diplomat. From the time she arrived in Copper County, when anybody in the school board office asked her, she'd

just tell them she hoped the day would come soon when the retarded label and segregation could go. She'd talk about mainstreaming and then tell stories about kids like Callie Peale. From her point of view, she was just being honest. From the other side of the fence, she was bluntly saying, "Hey, you're doing things wrong."

Other school administration employees were much more adept at dealing with delicate human situations than Maggie was. The most striking example was Howard Birdwell, the superintendent of schools. Coming from outside the county, he had been hired for a job a local man had been expecting to get. The school board had been divided into factions by the choice, so Mr. Birdwell could expect flak over anything he undertook. He had a long-term contract but was well aware that anything he wanted to do depended on not antagonizing the wrong people.

"This is a small county, and politics have to find some sort of arena," one of the superintendent's supporters explained later. "The school system's the biggest employer in the county, next to the highway department. Power's the name of the game, and the school system happens to be the football field they're playing on."

Mr. Birdwell had been a superintendent in various school systems for over twenty years. During those twenty-odd years, he had acquired a solid reputation for fair dealing and dedication to his profession. He had also mastered many of the necessary tools of the superintendent's trade, including the fine art of expanding verbal replies to avoid questions he didn't want to answer. A particularly difficult or touchy question was likely to elicit at least a fifteen-minute Birdwell discourse on anything but the question itself.

That kind of approach seemed to be useful as camouflage. A superintendent sits on top of a whole system that involves a wide variety of services, interests, organizations, transportation, and material needs, all of which sometimes conflict. The superintendent is expected to be a parent figure of sorts and take care of everybody's interests, so loyalties are divided. This can become complicated if the superintendent also has to juggle several new laws, limited funds, and local politics at the same time.

Mr. Birdwell moved his heavyset frame decisively, as if each

VALUES, PRIORITIES, POLICIES REGARDING HANDICAPPED STUDENTS

by
James O'Dell, Sr., James Hillesheim, Barbara J. Kerr
The University of Kansas

The social values, priorities, and policies regarding handicapped students are, to some degree, handed down to schools by such mandates as Public Law 94-142. However, budget and financial priorities and arrangements must be made at a local level. Since this involves the individual taxpayer and his pocketbook, one hears growing concern being voiced at the community level on the establishment of priorities, rethinking of values, and revision of policies regarding the allocation of funds.

In recent U.S. history, major reforms have been introduced to produce better education not only for the exceptional child but also for other minority segments of the population, especially racial and ethnic minorities. These diverse minorities have much in common: they have all suffered neglect and/or mistreatment at the hands of the majority; they have all forced the wider population to engage in considerable "soul-searching" regarding human dignity, individual rights and equal opportunities; and the minorities have, by pressing for real change, forced the public as well as the professionals to find the most equitable ways to distribute the always scarce resources. Since there is always competition for funds, the needs of any particular group cannot be considered apart from others, especially those with closely related claims. This unit will thus expand its province to include general matters of financing and treatment of the "disadvantaged."

Teacher Trainee Outcomes

Upon completion of this unit the teacher trainee will be aware of several programs and approaches, each reflecting a set of value priorities, the examination of which should assist the teacher trainee in establishing his own set of values, priorities, and policies regarding the public schools and the needs of the handicapped student.

Instructor Information

Prerequisites:

The teacher trainee and instructor will benefit more from this unit if they have background information about the federal and state mandates presented in previous units. Information on the historical background of exceptionality in American schools as found in an earlier unit, would also be beneficial.

Organization:

This unit consists of six teacher trainee enabling activities centered around three readings which provide information on national and local needs; programs that have succeeded and those which have not; and financial reforms used in various states to establish programs for the disadvantaged and handicapped. The activities include class discussions and activities designed to assist the teacher trainee in clarifying his own values and priorities.

Content Overview:

This unit provides information regarding financial reform. Programs around the United States being used to support special education as well as other curricular programs are reviewed to provide the student

with a background on policy settings and priorities. The section on General Provisions of the Education and Training of the Handicapped (Education of the Handicapped Act) is included for the teacher trainee to be able to identify the areas of greatest overall need in the United States.

Suggestions for Teaching:

Two one-hour class sessions are recommended for the delivery of this unit. It is suggested that the first four activities can be handled during the first session if the readings are assigned previously. During the second session, each teacher trainee should present his position paper on "The Major Barriers in our Society to Proper Integration of the Handicapped Is . . ."; time should be allowed for each student to defend his paper. If the class is large, this could be done in groups. If small enough, this could be handled by the class as a whole. The first session could be handled through lecture/discussion. Papers are to be handed in following the second session, thus readings and preparation of papers need be done prior to the class session.

Suggestions for Evaluation:

The evaluation procedures include participation in class discussion, presentation and defense of their special papers, and the instructor's evaluation of the papers.

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Prospectus

The bottom line of any policy decision is the budget and financial arrangements that emerge from that policy decision. Therefore, to understand the financial picture of schools is to understand the growing concern about inequality of educational opportunities, which is interrelated with the differences in the funds available to school districts. The how and why regarding the method of financing the Education of the Handicapped Act, with its heavy government support, becomes understandable against the backdrop of the reading for this unit entitled, "Changing Patterns of School Finance."

The distribution of funds requires the setting of priorities, which, in turn, is a reflection of social and personal values. Our values, of course, are subject to change, as can be seen in the history of our approach to racial, ethnic, and handicapped minorities. Our reading for this unit titled, "Desegregation and Mainstreaming," examines some of the value struggles that have taken place in these two related areas and the impact this has made on legislation affecting the education of minorities and exceptional children.

This competency may be fulfilled by implementing all of the following objectives.

Objectives	Enabling Activities
1. The teacher trainee will list the "findings" of Congress in Sec. 601 of the *Education of the Handicapped Act*, separating the "factual" from the "value" findings.	1. Reading 1: EHA, Sec. 601. 2. Class discussion of which of the "findings" are statements of facts and which are statements of preference or value.
2. The teacher trainee will prepare a special paper entitled, "What Form of School Finance Would Be in the Best Interest of the Disadvantaged Child."	1. Reading 2: Oliver and Morris. 2. Members of the class will present summaries of their special papers for discussion.
3. The teacher trainee will prepare a brief position paper titled, "The Major Barrier in our Society to Proper Integration of the Handicapped Is . . ."	1. Reading 3: Oden. 2. Each teacher trainee will present and defend his position paper.

Readings

Section 601, *Education of the Handicapped Act*, June, 1976.

Oliver, John and Gerald Morris. "Changing Patterns of School Finance," *American Teacher* (November, 1976), pp. 122-124.

Oden, Chester W. "Desegregation and Mainstreaming: A Case of *déjà vu*." *Mainstreaming and the Minority Child*, Reginald L. Jones, editor. Minneapolis: The Council For Exceptional Children, 1976, pp. 53-64.

Part X - Education and Training of the Handicapped

Education of the Handicapped Act

Part A - General Provisions
Short title; Statement of Findings & Purpose

Sec. 601

(a) This title may be cited as the "Education of the Handicapped Act."

(b) The Congress finds that --

"(1) there are more than eight million handicapped children in the United States today;

"(2) the special educational needs of such children are not being fully met;

"(3) more than half of the handicapped children in the United States do no (sic) receive appropriate educational services which would enable them to have full equality of opportunity;

"(4) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

"(5) there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected;

"(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

"(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of handicapped children;

"(8) State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children; and

"(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.

"(c) It is the purpose of this Act to assure that all handicapped children have available to them, within the time periods specified in section 612(2)(B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children".

Effective 11-29-75

CHANGING PATTERNS OF SCHOOL FINANCE

John Oliver
and Gerald Morris

The last five years have brought widespread changes to state systems of school finance. Major reforms have been introduced in at least 18 states with the aim of producing greater equality of expenditures per pupil and of reducing the burden of local property taxes.

In part, the changes were made in response to a growing concern about the inequality of educational opportunity which resulted from differences in the funds available to school districts. The changes were also a response to mounting pressure for property-tax relief and greater equity of property-tax rates between school districts. But the most important stimulus for change in school-finance systems was a series of court decisions which found existing school finance laws unconstitutional.

In 1971, in the case of *Serrano v. Priest*, the California Supreme Court decided that the California state system of school finance violated both the Fourteenth Amendment of the U.S. Constitution and a similar provision of the California state constitution.

Contrary to the constitutional requirement of equal protection (and equal treatment) under the law, the quality of a child's education was arbitrarily based upon the property wealth of his or her school district. Wide variations in the property wealth of school districts meant there were wide variations in the local revenues for education. Expressing what became known as the "fiscal neutrality" principle, the court stated that only the wealth of the state as a whole, not the wealth of a particular school district, could determine the money available for a child's education. During the following year, similar decisions were handed down by courts in other states. State legislatures, under court order, or perhaps anticipating challenges in court, began remodeling their school-finance laws.

Court-impelled changes in school finance based on the 14th Amendment were brought to a halt in 1973 by the U.S. Supreme Court decision in *San Antonio v. Rodriguez*. The U.S. Supreme Court reversed the decision of a Texas district court which had invalidated that state's school-finance system. The Rodriguez case, like the Seranno case, was based on the fiscal-neutrality principle. But the U.S. Supreme Court ruled that the Texas school-finance system did not discriminate against poor people as a "class," only against people living in poor school districts. It also ruled that education is not a fundamental right protected by the U.S. Constitution. However, the Supreme Court affirmed that education is a state responsibility and that legal challenges to school finance systems may be based on state constitutions.

Less than two weeks after the Rodriguez decision, the New Jersey system of school finance was invalidated on the basis of the state constitution. In *Robinson v. Cahill*, the Supreme Court of New Jersey decided that the school-finance system violated a clause of the state constitution which guarantees "a thorough and efficient system of free public schools." At fault was the wide variation in funds available to school districts as a result of the heavy reliance upon local property taxes. The court ordered the state legislature to fashion a new system of school finance, which, after repeated cajoling by the court, emerged in the form of the Public Education Act of 1975. However, the legislature to this date has not provided funds for the new system of state aid to schools. While the New Jersey struggle

From *American Teacher*, November 1976. American Federation of Teachers, AFL-CIO.

Oliver, John and Gerald Morris. "Changing Patterns of School Finance", American Teacher, November, 1976, pp. 122-124. This article appeared first in the November 1976 issue of American Teacher, the monthly newspaper of the American Federation of Teachers. Reproduced by permission.

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has gone on, other states have experienced similar challenges to their school-finance systems on the basis of state constitutional provisions.

The main target of the widespread attacks on school-finance systems is the heavy dependence upon local property taxes to support public schools. In general, public schools receive about one-half of their funds from local sources, and nearly all of this (98 percent) comes from taxes on property. The great differences between school districts in their property wealth produces corresponding differences in their tax revenues for education. It also results in proportionately greater tax burdens on the residents of poor districts.

In 1974, state governments provided an average of about 40 percent of public-school revenues. However, there was great variation among the states. In Hawaii, nearly 90 percent of public-school funds were provided by the state, but in New Hampshire the figure was less than 10 percent. Until the recent period of reform, two different systems have commonly been used by states to distribute aid to local school districts:

- One of the earliest forms of state aid to schools was a "flat grant" for each pupil. The state provided school districts with a set amount of money for each pupil, regardless of the needs of the pupil or the wealth of the district. The flat grant was in some cases supplemented by "equalization aid" or "supplemental aid" when a district clearly had inadequate resources.
- **The other system was the "foundation program." Under this system, the most widely used means of distributing state aid to schools, the state establishes a minimum expenditure or foundation level for each pupil. Deducted from this level is the amount the local district can raise with the minimum property-tax rate that qualifies for state aid. The difference between the foundation level and the amount raised locally is provided from state funds.**

Both the flat grant and the foundation program can function to equalize the differences in property wealth between school districts. If the flat grant or the foundation level is set high enough, it will have an equalizing effect. But in practice even the foundation program, which was designed to have an equalizing impact, has not been notably successful. The equalizing provisions have been undermined by inadequate state funding, by "floors" to assure even wealthy districts some state aid, and by "local leeway" which allows wealthy districts to spend above the foundation level. In addition, the foundation program does not usually recognize differences between districts as to educational need or the cost of education.

Efforts to achieve greater equality of funding for education have brought forward a number of proposals. Three of these proposals have received the greatest amount of attention. They are "district power equalizing," "percentage equalizing," and "full state funding." Under district power equalizing, the state guarantees the amount of revenue a school district will receive for a given tax rate (tax effort). If the district generates less revenue because it has insufficient property wealth, the state makes up the difference. With a percentage-equalizing formula the state reimburses each school district for a percentage of its approved expenditures. A district with low property wealth receives a higher percentage of its funds from the state.

Full state funding means simply the full assumption by the state of all educational expenditures. Revenues for education may be provided by a statewide property tax, administered by state or local government, or from other sources of state revenue. Full state funding is probably the surest way to achieve equal educational opportunity within a single state, but a number of criticisms are raised against the proposal. The most commonly heard criticism is that full state funding would diminish local control of schools. A question that is closely related to the issue of local control is what are the consequences of full state funding for collective bargaining by teachers.

In their simple form, none of the proposals to improve school financing necessarily produce greater equity in taxation or greater equality of expenditures per pupil. This is apparent from a simulation of the effect of the three proposals upon major U.S. cities, areas which generally have the most acute problems in school finance. A simulation prepared for the National Urban Coalition shows that for most large cities district power equalizing would either lower expenditures or raise taxes, percentage equalizing would barely change either taxes or expenditures, and full state funding would raise tax rates and leave expenditure levels about the same. Each plan in its simple form fails to consider important differences between school districts in educational need, the costs of education, tax capacity (wealth), and tax effort (tax rates). Adjustments for need, cost, capacity, and effort are necessary if the reform proposals are to provide tax equity and greater equality of educational opportunity.

New wealth measures have been suggested as a means of more equitably determining the *capacity* of a school district to support education. The traditional practice of defining capacity in terms of district property values per pupil overstates the wealth of many areas. For example, large cities typically have high property values per pupil, but they do not have equally high per-capita income to pay the property taxes. Measuring local capacity in terms of a combination of per-capita income and property wealth, and adjusting state aid accordingly, is generally a more equitable procedure. But the actual impact of including income in the measure of wealth will depend upon the type of income measure which is used and the distribution of income within a state. In Rhode Island, Maryland, and Connecticut the use of a combined income and property wealth measure generally works to the advantage of urban areas, but in Virginia and Kansas it favors rural over urban areas.

Another means of adjusting taxes to the ability to pay is through "circuit breakers." Approximately one-half of the states have such provisions for rebating to elderly or low-income homeowners all or part of their local property taxes.

Municipal overburden is a term which refers to the overall heavy tax effort required of many large cities. Adding together all of the taxes paid by their inhabitants, most large cities make greater per-capita tax efforts than the states in which they are located in order to support a heavier demand for such services as police and fire protection, refuse disposal, street maintenance, and traffic control. In comparison to the per-capita expenditures for their respective states, expenditures in large cities run 53 percent higher for police, 91 percent higher for fire protection, and 87 percent higher for refuse disposal.

In its school-finance reform, Michigan adopted a municipal overburden adjustment. Areas which have tax rates 25 percent above the state average, not counting the taxes to support education, receive extra aid from the state. However, the municipal overburden adjustment has only been funded at approximately one-fourth of its authorized level.

Categorical programs of state aid, which target money on special needs, have been of increasing importance in specific states. California has a substantial program which focuses on the needs of disadvantaged students. Four states—Illinois, Massachusetts, Colorado, and Louisiana—have made strong efforts in the area of bilingual education. In Illinois the bilingual program is an important source of aid to Chicago, for nearly two-thirds of the children served by the program live in the Chicago area. But in most states, adjustments for pupil need that are applied to general-aid formulas are of much greater importance than categorical programs.

In the aftermath of the *Serrano* decision, a number of states have added more comprehensive adjustments to address the special needs of students. Typi-

cally, this is done through pupil weighting schemes. Formulas for distributing state aid to schools are adjusted by weights which are assigned to individual pupils. Some of the common adjustments are for students enrolled in vocational education, special education, or compensatory education. A pupil who is weighted more heavily entitles his school district to correspondingly greater state aid.

Comprehensive weighting systems have been adopted by such states as New York, Florida, Utah, and New Mexico. New York is unique in that it bases its adjustments for disadvantaged students on low pupil-achievement-test scores, rather than on a measure of low family income. The use of pupil weightings based on measures of need tends to provide greater state aid to low-wealth districts, both urban and rural. High-wealth urban districts have also gained from adjustments for disadvantaged students.

Differences between school districts in the *costs of* providing education may be adjusted by the use of cost indices.

The State of Florida has used a cost-of-living index, based on a market basket survey, but use of the index is now being challenged in court. There is some evidence that the use of cost indices are especially helpful to urban school systems. Although urban school systems do not necessarily spend the greatest amounts of money per pupil, the costs of services and supplies are typically higher in urban areas. However, there is opposition to the use of cost adjustments from individuals who believe they will add to the power of unionized teachers to win improved salaries and benefits.

In general, the school-finance reforms of the past five years have provided additional funds for education and have more equitably distributed funds among high- and low-wealth school districts. The source of revenue for schools has also shifted somewhat from local property taxes to a greater reliance on state revenues. However, while the reforms have reduced the effects of property wealth inequalities among school districts, they have not adequately addressed the broader problems of capacity, tax effort, cost, and educational need.

An unpublished study by the National Urban Coalition shows that when these additional factors are taken into consideration it is evident that many needy school districts have not benefited from the recent redistributions of state aid.

An adequate response to the fiscal problems of school districts will require a greater commitment of state and federal funds, as well as changes in the formulas used to distribute these funds. There is danger in the idea that a satisfactory equality of educational opportunity can be achieved by simply redistributing inadequate resources. In this light, some of the recent reforms in school finance have contained provisions which may threaten the existence of quality education. Several of the reform states have imposed restrictive expenditure or tax-rate limits on local school districts. Although ostensibly designed to promote equality of resources among districts, and to restrain tax increases, such limits may function to deny necessary and reasonable increases in education funding. For example, in the recent period of school finance reform, the states with more restrictive tax or expenditure controls have generally experienced below-average increases in teacher salaries.

Another means of restricting the increase of funds for education is through "recapture" provisions in state-aid formulas. Four states—Maine, Montana, Utah, and Wisconsin—have enacted recapture laws which will take from wealthier districts certain local revenues that are above state-imposed maximums. While the use of recapture will certainly limit the differences in funding between school districts, it may also serve as a brake upon improvements in educational funding. Instead of low-wealth districts being brought up to the level of high-wealth districts, by state and federal aid, all school districts may simply be held to a lower level of quality.

The complexities of school finance and the variability of local conditions suggest there is no one best way to channel funds to all school districts. Moreover, many of the reforms in school finance have been so recently adopted that their consequences are as yet unclear. In particular, the full impact of the new systems of school finance upon collective bargaining by teachers is yet to be realized. Some of the new procedures appear to hold promise of improved funding of public education. However, some of the proposals have been advanced specifically with the intent of curtailing the bargaining rights of teachers.

Desegregation and Mainstreaming: A Case of *déjà vu*

Chester W. Oden, Jr.

Few public issues are so emotionally charged, so misunderstood, so wrapped in confusion and clouded with misunderstanding, as the issues of desegration and mainstreaming.* While these issues are of direct and immediate concern to every citizen, they are of particular importance to every black parent.

The treatment of mainstreaming and desegregation in a single chapter may seem to be a strange marriage. Upon reflection, however, it is apparent that these two educational strategies emerge from a common concern—that of ensuring equality of educational opportunity. The strategies have at their core the principle that any educational arrangement which segregates children from their peers because of differences in race, social class, or presumed ability to learn, deny equality of opportunity. Thus the case for desegregation has been made on grounds that children's educational growth and development is stunted by education in segregated settings.

Early arguments advanced by social scientists to support the case for desegregation bear a strong resemblance to those used to support the call for mainstreaming. The social science statement introduced as an appendix to the appellants' briefs in the historic case, *Brown* v. *The Board of Education*, which struck the blow against public school segregation in part read as follows (Allport, et al., 1963):

> Segregation, prejudice, and discrimination, and their social concomitants damage the personality of all children—the children of the majority group in a somewhat different way than the more obviously damaged children of the minority group. . . . As children learn the inferior status to which they are assigned—as they observe the fact that they are almost always segregated and kept apart from others who are treated with more respect by the society as a whole—they often react with feelings of inferiority and a sense of personal humiliation. Many of them become confused about their own personal worth. (p. 168)

* Mainstreaming was defined in Chapter 1. That definition will be used here. Desegregation for our purpose will refer to an interracial mix without reference to the quality of the interaction.

The call for mainstreaming also has emerged from legal and constitutional issues and also is based upon the presumed impact of segregation by ability upon the social development of the children and youth so affected. Arguments for mainstreaming bear a close similarity to those advanced to make the case for school desegregation.

In addition to issues of equality of opportunity, mainstreaming and desegregation also come together around the issue of race. The call for desegregation and mainstreaming has resulted in part from the fact that minority children have been disproportionately represented in certain classroom and school settings. Indeed the early segregation by race and ability sprang from similar rationalizations, e.g., that the children's differences were so great as to render them uneducable by ordinary means.

There is good reason then to look at parallels between mainstreaming and desegregation and to draw from their commonality principles which suggest directions for change. It will be the purpose of the chapter, therefore, to highlight interrelationships between the two educational strategies and to propose solutions for the resolution of issues surrounding them.

The Changing Climate

"Educators, social scientists, and philosophers in general have for decades concerned themselves with the 'cultural lag' between the accomplishments of the physical scientist and those of the 'social engineer' " (Barry, 1972, p. 41). In the early years of the 16th century, Galileo shattered the egocentricity of the medieval church and its dogmas concerning the importance of man by discovering that the sun, not the earth, was the center of the universe. This discovery paved the way for persons like Isaac Newton to prove the laws of gravity and their influence upon matter.

"Prior to that time, the beliefs of the medieval world had rested upon the absolutes of the world of Euclid, where matter and man contained within themselves . . . all the elements necessary for their survival and salvation" (Barry, 1972, p. 41). It was John Watson's behaviorism with its emphasis on the environment that made the social scientific transition between Euclid and Newton. Here man was viewed, not as a self-contained organism whose fate was sealed by his genes and his ability to cope in isolation, but as a product of outside influences which, like gravity, were perennially affecting his thoughts and actions.

During the latter decades of the 19th century in Germany, the new science of sociology began to describe men in what were known as "primary" and "secondary" groups.

Oden, Chester W. "Desegregation and Mainstreaming: A Case of deja vu". Mainstreaming and the Minority Child, R.J. Jones, Ed. Council for Exceptional Children, 1976, pp. 33-44 Reproduced by Permission.

According to these theories, the primary group was made up of the family, the neighborhood and other face-to-face groups of which the individual is an intimate and immediate part. The secondary group, first described by Ferdinand Toenies, was made up of institutions like the church, business, industrial companies, national, or international governments. Many words have since been written about these intergroup relationships, with increasing evidence that while the power of the primary group over the individual diminishes, the power of the secondary group continues to gain in the modern world (Barry, 1972).

Man is moving inevitably away from the primary group to the impersonal secondary group of the "company" or "government." As the individual faces the sometimes traumatic transition from primary to secondary group relationships, two distinct attitudes, representing two kinds of reactions, become apparent. One is the individual who finds himself unable to move beyond the bounds of the primary group, for whatever reasons. There are those social scientists who propose that our society should be designed to preserve these special classes to the exclusion of secondary group relationships. Evidence of such efforts is apparent in the maintaining of black separatism, preservation of the neighborhood school, special education classes, or the isolation of the socially elite private school.

A second attitude is exemplified in the individual who succeeds in moving quite effectively from the primary to secondary group. These persons find reinforcement among the social scientists who, believing the growth of secondary group relationships to be inevitable, have set about to preserve the moral, ethical, and "human" values of the primary group in the functioning of the secondary group as exemplified by the right to education documents. Secondary group leaders, such as those in the educational establishment, must formulate their policies, structure their organizations, and develop their programs so that the human relations values, once the province of the primary group alone, may be preserved in the secondary group.

Such a viewpoint leads to the premise that society, through the operations of the secondary group, should provide opportunities for all individuals to move more effectively from the intimate primary group to the more challenging and adventuresome experience provided by the secondary group. It follows, if such opportunities are provided, that it is easier for such individuals to associate and interact with other individuals who come from primary groups whose culture is quite different from their own.

Michael J. Bakalis, Illinois state school superintendent, put it this way in recent congressional testimony:

> A high price is paid by any child, be he white or black, who goes through his entire school career without ever meeting a child or teacher of another racial or ethnic background. Schools separated by virtue of handicappedness, ethnicity, or racial lines serve only to nurture prejudicial attitudes among the young and to divide us further as a people. A child who has been so isolated throughout his formative years is being educationally deprived. (U.S. Commission on Civil Rights, *Your Child and Busing*, 1972, p. 19)

Harlan Cleveland found that Americans who worked abroad in the U.S. government, private industry, or other organizations were most efficient and effective when they possessed the quality of empathy, i.e., the ability to understand and interact with persons who were culturally different from themselves. It was found that those Americans who were most empathic were those who had been educated from childhood in schools and communities where they had known a wide range of individuals who were different from themselves socially, economically, religiously, and in other ethnic areas.

The Secondary Group

The School

Education is more than reading, writing, and arithmetic; education is preparation for life. Students need more than facts and problem-solving skills; they need to know how to lead full and useful lives in a complex world. In a nation made up of a variety of races and nationalities, that means learning how to live and work with people of different skin colors and cultural backgrounds. If one accepts this broad view of education, one cannot imagine a worse way of undertaking it than in a classroom segregated by race, national origin, or handicappedness. Segregated classrooms deny millions of Americans the opportunity to become acquainted with the minority child whose future they share.

A major objective for American public school education should be to provide multiple experiences for all children. It should be as desirable for children of the rich as it is for children of the poor to know all kinds of people who inhabit the world in which they live. Thus, the opportunity to learn and work with peers from various cultural backgrounds must be provided from hour to hour and from day to day.

School Failure

Historically, just the opposite has been true. One of the means for coping with individual learning differences and school failure has been

to create homogeneous special classrooms; that is, classrooms created on the basis of grouping techniques which minimize individual differences among children. These efforts to decrease student heterogeneity have resulted in the removal from mainstream education of substantial numbers of children whose learning characteristics made them difficult to teach under the conditions of traditional classroom organization.

In both school desegregation and mainstreaming, there can be seen clear patterns of rigid, majority-dominated systems demanding that children who are different in terms of race/color or handicappedness conform to *existing* attitudes, expectations, values, and practices. Failure to do this is perceived as proof that such children are troublesome, frightening, inferior, and undesirable.

We should not allow ourselves to get into petty squabbles about what special education is. We know that many children in the inner city have special needs. Many are retarded functionally by virtue of the conditions of life circumstances. Wilson Riles, California State Superintendent of Public Instruction, in a conference on problems of education in the inner city made a cogent statement which in summary says, "If there is a question as to whether you and I and all of our colleagues fail to meet this challenge (of education problems of the inner city) with the...disadvantaged for whatever reasons, then the public schools are simply not going to survive. And if we don't meet the challenge, I don't think the public schools deserve to survive" (President's Committee on Mental Retardation, 1969, pp. 3-4). Educators, administrators, and persons interested in education all seem to concur that the schools cannot separate a specific problem of education like mental retardation, handicappedness, or disadvantagedness, from the total school environment.

Barriers to Change

The educational system does not support its members for being different. Thus, feelings of personal inadequacy on the part of school administrators and teachers result in low levels of personal autonomy and high levels of hostility focused on out-groups which pose real or perceived problems. Change boils down to choices by majority members between following a personal value system and following the majority value system. Facilitating change begins with the idea of personal responsibility for individual behavior.

There is a strong possibility, however, that a person attempting to change the system will become the victim of the system. Thus, teachers are reinforced for high avoidance behavior; not to be seen or to be seen only in ways calculated to reinforce the thinking of the administration.

A Pseudo Dichotomy

Desegregation and mainstreaming connote different attitudes among some of the population. While some educators may consider these terms to be synonymous, various other segments of society view these processes as different. However, they are not different in terms of classroom patterns. Classroom patterns show that there is a disproportionate number of minority children occupying special education classrooms who have no business being there. Students from the inner city come to school with a bewildering diversity of problems and an enormous range of "different" personal characteristics. These same students are met by teachers who show an almost equally wide range of diversity.

Riles notes:

> The rate of placement of Spanish surname children in special education is about three times higher than for Anglo children; the Negro rate is close to four times higher than the Anglo rate. (President's Committee on Mental Retardation, 1970, p. 2)

> We now have what we may call a 6-hour retarded child—retarded from 9 to 3, five days a week, solely on the basis of an IQ score, without regard to his adaptive behavior, which may be exceptionally adaptive to the situation and community in which he lives. (President's Committee on Mental Retardation, 1970, Title Page)

The question must be raised: to what extent are children misclassified when the true nature of their mislabeling is the fault of the secondary group, i.e., the school? The educational institution is at fault because it preaches certain platitudes of moral, ethical, and human values on the one hand, yet its policies and practices are segregation and isolation on the basis of racial, physical, and ethnic differences. In effect, the secondary group through the use of special education practices blatant racism.

Desegregation

Background

In 1954, 17 southern and border states and the District of Columbia required racially segregated schools by law. Arizona, Indiana, Kansas, New Mexico, New York, and Wyoming had laws specifically permitting segregation. Segregated schools also have been maintained in New Jersey, Illinois, and Ohio.

While early pressure for desegregation was concentrated in the south, efforts in more recent years have been geared toward investigating conditions outside the south where racial isolation stems from segregated housing patterns, such as in New York City where 80 percent of the black students attend majority black schools, and in Chicago where 97 percent attend majority black schools.

The importance of desegregation to the well-being of our society was recently noted by one nationally known commentator who long had been skeptical over the wisdom of passing laws to protect the rights of minorities. Writing about the abolition of segregation laws in Mississippi, he observed,

> The fact of the matter is that the end of Jim Crow hasn't increased interracial hostilities; quite the contrary. In the past four years Mississippi has achieved a racial integration unthought of in the north... Mississippi lost its right to pass its own laws respecting schooling, transportation, hotels and restaurants, and is without question a better place to live in now than before. (Buckley, 1972)

More concertedly, minority Americans have long known as the Supreme Court stated in 1954, that "separate educational facilities are inherently unequal." As one black leader put it recently, the only way to make sure that black Americans receive equal educational opportunities is to put them in the same classroom with whites. In several cities, the Commission on Civil Rights has been told of inner city schools that have been improved magically and almost overnight when the district launched a busing program. In a letter to a Washington newspaper, a black parent of North Carolina gave her testimony: "Within one month parents of the white children who were bused managed to get the black school repainted, repairs made, new electric typewriters and sewing machines, and the shelves filled with books...I contend that busing for one year will upgrade all our schools quicker than anything the president or Congress can do" (U.S. Commission on Civil Rights, *Your Child and Busing*, 1972, p. 15).

School desegregation has begun to make inroads on the entrenched racial isolation and hostilities with which most pupils (and teachers) confront each other in segregated systems. To suggest there will be no school disorders would be folly indeed, but the fact that disorders occurred at schools and on buses before they were desegregated indicates that such incidents are not uniquely connected with desegregation. Moreover, there is reason to believe that some events are given overblown attention—in and out of the press—if they can somehow be connected with the controversial issue of busing. Some incidents that otherwise would not have even been reported are suddenly "racial" incidents. Staff members of the Commission on Civil Rights found that where incidents occurred they generally took place at the beginning of the school year and quickly died down. There is considerable evidence that disorderly pupils take their cues from their elders, particularly those in the community. Students can hardly be unaffected when adults burn and bomb buses, set up picket lines, and shout insults. If there is tension and disorder outside of the school, there is bound to be tension and disorder inside.

Accepting Differences

The majority population structures the world (in terms of institutions, power groups, and values) to meet its own needs and expectations. Thus, difference is decreed as negative. Not being like the majority is viewed as undesirable, troublesome, frightening, and inferior. Most of the majority population is raised to believe that anyone not just like themselves is not to be accepted; anyone poorer than themselves, anyone with different manners, anyone who is different looking. There is a belief system among the majority that does not even consider the possibility that the majority view is wrong, too narrow, or limited.

Our society has created compartments of resistance to the acceptance of people who are different from one another. Called fear of the unknown, it is characterized as follows: most majority adults have had no first-hand experience with any kind of real differences, no childhood experience with a physically handicapped person or a racially different person. Under these circumstances the majority adult, when the opportunity does present itself, is turned off. Most people feel under these circumstances that they want to turn and run.

Again and again pupils of both races say that their initial fears of going to an integrated school have been alleviated by the actual experience of attending one. Not only have their fears been allayed, but their basic attitudes have changed with respect to members of other racial and ethnic groups. There is no reason to assume that the kinds of fears people have about handicappedness would not also be alleviated by some kind of social interaction. The remark of a high school girl in Pasadena, that in her integrated high school people measured each other by their individual achievements regardless of race or ethnic background, suggests that in part, at least, racial equality is being achieved.

If knowledge of and contact with persons who are different from oneself is an asset to the individual in today's world, most of the social values to which we have been conditioned must be reviewed and our educational patterns reconstructed.

What Happens in the Classroom

Mainstreaming and desegregation enable children to remain in a more normal environment. Nonspecial children benefit as well as mainstreamed/desegregated children by the social contact. Nonspecial children can see and ask questions about mainstreamed/desegregated children so that they may develop a more positive and realistic perception of their classmates.

There is a motivation or drive present in a regular class that is often not found in more homogeneous classrooms. Mainstreaming encourages greater student responsibility because children are encouraged to help each other.

It should be noted, moreover, that those children labeled as special education students often have fared least well within the traditional classroom structure. Again the secondary group must accept some responsibility for making the regular classroom a viable experience. Without the implementation of appropriate instructional procedures in the regular classroom, the integration of special students into regular classrooms could prove disadvantageous to them.

Not all mainstreamed/desegregated children can go immediately into regular classrooms. Curriculum, materials, and teaching procedures must be adapted in many instances (see the section on curriculum in the present volume which highlights many needed adaptations). Careful planning is needed for the integration of mainstreamed/desegregated children into regular classrooms. This includes readiness on the part of students, teachers, parents, and the community.

Planning for Desegregation/Mainstreaming

Basic Tenets

There are some basic tenets which must be recognized and understood before any program for desegregation or mainstreaming can be designed and implemented. We must believe that:

1. The importance the American people have placed on education is justified and every child deserves, as a matter of right, a high quality of education.
2. School desegregation/mainstreaming is the most urgent moral imperative facing the American people.
3. Racial justice and unity are essential to the nation's future well-being and they cannot be achieved so long as our children are educated in racial isolation.
4. The acceptance of school segregation in any manner would leave to future generations a heritage of more distrust, more cynicism, and more alienation.
5. Special education in isolation is a vicious form of segregation which can only have negative effects on the children who are its subjects.
6. Special education in isolation permits/allows adults to maintain their own pathology at a level that is constant.
7. Students must be allowed more responsibility for creating their own school environment.
8. Students must be prepared to accept people for whatever their abilities and contributions.
9. Students must share in the desegregation/mainstreaming efforts in their individual schools by being given adequate background to deal with the responsibilities of developing and maintaining a pluralistic environment.
10. Teachers' attitudes influence the success of any student, but especially the disadvantaged/mainstreamed student.
11. Teachers must broaden their ranges of tolerance for behavioral and academic differences.
12. Teacher preparation for desegregation and mainstreaming is imperative.
13. Teachers must be prepared for these processes by college coursework, practicums, or inservice training.
14. Parents must support the school personnel and all the students in schools where multi-experiences are being provided.
15. Parents must support the school personnel and the students where cultural differences avail.
16. Colleges and universities must develop relevant curriculums for teacher participation whether by college courses, practicums, or inservice training programs.

Human Relations Interaction Skills

Aside from the negative consequences that segregation and special education programs have had directly upon the children, think of the horrendous effect they have had upon teachers. Teachers are permitted to maintain their own pathology at a constant level. How can regular classroom teachers be convinced to become more aware and sensitive? How can programs be developed in a human way so that what is done to teachers is not what we claim they are doing to students?

Point of View

People tend to structure the world to meet their own needs; their own expectations. Teachers also do this. When teachers talk about the

"handicapped," they must be brought to the realization that the term is really an artifact, a creation, a handle. First we start by saying "Ha, children are not in special classes because of the way they are; children are in special classes because of the way the system has responded to them. In order to communicate with the problem, you must understand the pathology of the problem."

It is not as though you can have your point of view, and I can have my point of view, and one is as good as the other. Not so. The criterion that needs investigating is what does any particular point of view do to the special student? If looking at children as handicapped results, for example, in facilitating their personal development and growth, then one has an obligation to sit down and consider that point of view very carefully.

Autonomy

We must also move into the issue of personal identity and personal health. The degree to which a person makes any value judgment without dependence upon significant others for support (strokes), is a function of autonomy. Autonomy can be seen as a direct outgrowth of some degree of mental health.

How can teachers be convinced that autonomy is one of the better options? The process is difficult at best. Any educational program should include encounter training, self-understanding, theoretical training, self-concept development, and experimental activities in the field where teachers are continuously required to take risks.

The whole idea of healing self, of autonomizing, is to develop in teachers *au fait* in accepting the consequences of their own behavior. This begins with the idea of personal responsibility. It is reasonable and feasible to recognize that people elect themselves into high risk situations. But there is a higher value. The personal responsibility route does something else. It gets people out of that pseudosexual kick where they say "Gee whiz, I'm learning about black folks, or handicapped folks, or whatever" which was the fashion during the desegregation days of the 1960's.

Perspectives for the Professional

Because special educators have not, in the past, recognized the total implications of special education on specific groups of people; have not recognized the overlap of special education and racial isolation; have not recognized that minority children have been overrepresented in the special education classroom, special education has suffered a negative mark across the nation.

Today, while teachers and especially the special educators begin to recognize the moral implications of special education in isolation, they are confronted with a whole new aspect, the legal ramifications of mainstreaming.

A recognition on the part of special educators must be made that an important opportunity to join with those people who are involved in desegregating schools is now at hand in the mainstreaming of handicapped and retarded children. Special educators must recognize they *can* join with a great many other forces that are interested in a unitary school system; unitary in the sense that all children are related within one total system. There exists an opportunity for special educators to become involved, in one sense, in a much broader scope of education.

Recognizing the ramifications of the problems, special educators must provide leadership in these sensitive areas. Not to do so has to have serious moral as well as legal implications, because isolated forms of special education have been a veil for the actual segregation of students for many years.

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ETHICAL AND SOCIAL CONSEQUENCES OF TESTING, GROUPING AND SPECIAL TREATMENT

by
Faith Scofield and James Hillesheim
The University of Kansas

Do children have the right to a free and appropriate education regardless of race, age, or aptitude? Can children be removed from regular educational programs without a legal hearing? Can children be effectively grouped by ability test results? These questions pose problems of ethical and social rights for children in our educational structure. This unit will acquaint the student with background information of expanding children's rights/choices and the importance of due process. The ethical problems of using test results for placement is highlighted in the readings for this unit. The ethical and social consequences of testing and grouping will be regarded as an important aspect of any treatment professionally designed for the exceptional child.

Teacher Trainee Outcomes

Upon completion of this unit the teacher trainee should be able to describe some of the advantages and disadvantages of testing and to discuss some of the important ethical and social consequences of the testing, sorting, and special treatment of exceptional individuals.

Instructor Information

Prerequisites:

No specific prerequisites have been identified for this unit. It would be helpful to have background information on test construction, administration, and interpretation.

Organization:

Four readings comprise the reading content for this unit. In addition, students will have numerous class discussions, a simulation exercise, and the writing of a "Bill of Rights" for handicapped youth.

Content Overview:

The readings provide information on social and ethical values of children's rights, student perceptions of the violation of their human rights, and the ethics of testing and grouping. A simulation activity could be used to discover the effects of an expanded "Bill of Rights" that would extend to all public school students. A written activity could also be used to have teacher trainees prepare a "Bill of Rights for Handicapped Youth." A possible sequence might be as follows:

I. Sociology of deviance
   - A. Minority status of exceptional individuals
   - B. Group stereotyping

II. Ethical and social consequences of children's rights
   - A. Parental authority
   - B. Rights of child
   - C. Due process

III. Ethical use of testing and grouping
   - A. Advantages of testing and grouping
   - B. Disadvantages of testing and grouping

Suggestions for Teaching:

Two or three class sessions of approximately one hour each are necessary for completion of this unit. The first session could be organized to arrive at a consensus definition of what is meant by "The Minority Status of Exceptional Individuals."

During the second and third class sessions, after conducting a simulation exercise, the class could be divided into subgroups to formulate and write a "Bill of Rights" for handicapped students. Time could also be set aside to discuss the articles by Long and Kirp, with special emphasis on social and ethical consequences of testing and grouping.

Suggestions for Evaluation:

Staff judgement of the written projects and quality of class participation in assigned activities compose the evaluation component of this unit.

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Prospectus

Education has exhibited an irresistible inclination to systematize content, to organize ideas into categories, to develop methods, to apply labels, and to place people in groups.

Recent activity relevant to the special child is responsive to the changes in the thinking of people, to changes in the social structure, changes in politics, and changes in technology. This is certainly true of medical technology with its ultimate potential for reversal of the limiting conditions. The climate of thought present in American society is a fusion of the effects of many major events and developments. In the present, trends in education for the special child is a result of this thinking and operates within the milieu, not in a vacuum.

Donald Bersoff's article entitled, "Child Advocacy: The Next Step," allows us to see the direction of the energy fusion occurring in society as related to the rights of its children.

From the broad scale of the readings for this unit it is hoped that the teacher trainee may be able to view the island from a distance and in a different perspective than in the past. Buckminister Fuller said that if we sail close to the island, the only view we get is of the surf, the sand, and the trunks of trees. It is by moving back and out and viewing the island as a whole that our view is enlarged and thus might lead to enlarged compassion and understanding of our fellow humans' needs and rights.

This competency may be fulfilled by implementing any two of the following objectives.

Objectives	Enabling Activities
1. The teacher trainee will discuss in writing the ethical and social consequences of a "Bill of Rights" for all children and youth.	1. Reading 1: Bersoff. 2. Class discussion plus a simulation exercise to project what would happen if a Bill of Rights were to be extended to all public school students.
2. The teacher trainee will write a short "Bill of Rights" for handicapped youth.	1. Reading 1: Bersoff. 2. Sub-groups formed to formulate a class "Bill of Rights" for handicapped youth. 3. Write and publish (mimeo) final "Bill of Rights."

Objectives (cont.)

3. The teacher trainee will prepare a list of the advantages and disadvantages of testing and sorting.

Enabling Activities (cont.)

1. Reading 2: Kirp.
2. Reading 3: Long.
3. Class discussion and comparison of advantages and disadvantages of testing and sorting.

Readings

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Kirp, David L. "The Great Sorting Machine," *Phi Delta Kappan*, Vol., LV (April, 1974), pp. 521-525.

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Bersoff, D. Child Advocacy: The Next Step. New York University Education Quarterly 7, 3(1976): 10-17.

CHILD ADVOCACY: THE NEXT STEP

DONALD N. BERSOFF

Unless there is risk of irreversible damage or clear evidence that a child cannot exercise discretion, parents and the state should not have the right to make unilateral decisions that seriously affect children's lives. The child's interest is best measured by himself.

The recent burgeoning of interest and litigation in the area of children's rights can be traced to 15-year-old Gerald Gault's obscene phone call to an Arizona woman in 1967. As a result of his conduct, Gault was brought before the juvenile court. At that time, proceedings before such courts were considered rehabilitative and non-criminal, and so no records were kept, no charges were specified, there was no protection against self-incrimination, and counsel was not provided. Gault was sentenced to a youth detention center until his 21st birthday, a sentence of six years for a crime that would have cost an adult two months' imprisonment and a fifty-dollar fine. The case, formally known as *In re Gault* (1), was ultimately appealed to the United States Supreme Court, which reversed the conviction and held that children in juvenile court proceedings were constitutionally entitled to certain (though not all) due process guarantees previously limited to adults in criminal prosecutions. The broader impact of this landmark decision was reinforced two years later when the Supreme Court officially and explicitly declared that children were *persons* under the Constitution and possessed fundamental rights that the state was required to respect. (2)

Parental Authority

Such recognition of children's legal status by the Court, belated as it was, signaled a significant advance. Historically, both parents and state have exerted inordinate control over children. Under ancient Roman law, fathers had the power of life and death over their offspring, and infanticide was not uncommon (especially if children were female or deformed). Before the Norman Conquest, English fathers were able to murder newborns and sell children under 7 years of age into slavery. More recently, parents have been able to imprison their children in penal institutions. For example, in 1904 a District of Columbia court upheld the right of a father to place his daughter in a reform school for girls without even the pretense of due process. In so doing the court reasoned:

> The petitioner was a minor between 15 and 17 years of age. Her father, as her natural guardian, had the legal right to regulate her conduct, to restrain her liberty within all reasonable bounds, and to direct her training and education. She was not entitled to general freedom of action but was under his tutelage. He had the legal right to confine her within limits, to select her associates, and to commit her to the restraint of an institution for training and education during her minority, without her consent.
>
> The child herself, having no right to control her own action or select her own course of life, had no legal right to be heard in these proceedings. (3)

The modern manifestation of this control is the right of parents to commit their sons and daughters to mental hospitals. Most states permit this "voluntary" commitment without a hearing or any other form of judicial scrutiny. (4) As long as hospitals acquiesce to parental demands, minor children's protests against commitment are to no avail. Children must wait until they reach legal majority or some other statutory age threshold to institute proceedings leading to their release. Adults, on the other hand, may not be committed for any but a brief period of time without at least rudimentary due process protections.

While the state continually announces its solicitude for the integrity and sanctity of the family unit and the right of parents to regulate the upbringing and education of their children, there is no question that the state can directly intervene in family relationships when it thinks it appro-

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priate. In upholding Indiana's compulsory education law in 1901 against a challenge by parents that the statute was an unauthorized invasion of their rights, the state's highest court said:

> The natural rights of a parent to the custody and control of his infant children are subordinate to the power of the state, and it may be restricted and regulated by the municipal laws. . . . The welfare of the child and the best interests of a society require that the state shall exert its sovereign authority to secure to the child the opportunity to acquire an education. . . . No parent can be said to have the right to deprive his child of the advantages so provided. (5)

Fifty years ago, the Supreme Court approved a Massachusetts statute forbidding the sale of goods in the street by children, even though they had the permission of, and were accompanied by, a parent. In holding that the rights of parenthood were not beyond limitation, the Court asserted that the state had wide power to restrict parental freedom and authority when the state, in so doing, was furthering the well-being and welfare of children. (6) States have also required that children receive blood transfusions, vaccinations, and other medical treatment, despite parental protests, when government authorities have determined that such intervention was in children's interests.

The perceived consequences of all this benevolent intrusion by parents and the state in behalf of children has been summarized by one commentator:

> In this continuing struggle, the child has always been the pawn. Neither philosophically nor legally has he been recognized as having a right to *do* anything about the vicissitudes of his life, but only to await the action of others in his behalf or in his best interests. He is in a state of powerlessness, and for that reason, the institution of childhood has been seriously compared to the institution of slavery. It has been called the "last legal relic of feudalism." (7)

An interesting historical footnote is supplied by Pollack and Maitland. Classes of children during the Middle Ages were considered adults when they could count money and measure cloth. But those who would be serving as knights were kept infants until they were 21 years of age, allegedly because of the need for strength and experience in carrying heavy armor and weapons. (8)

Expanding the Rights of Children

As the more egregious and cruder forms of discrimination against minorities have been ameliorated in the past two decades, attention has turned to the plight of other groups who have not been afforded the full and equal protection of the laws, most particularly women and young people. Those who have sought to enhance the status of children and broaden their rights under the Constitution and federal and state laws are usually known as child advocates and their movement is called child advocacy. Child advocacy has been formally defined as "the intervention on behalf of children in relation to those services and institutions that impinge on their lives." (9) The result of this activity has been a significant alteration of the balance of power in child-populated, adult-dominated institutions. Most conspicuously, in juvenile courts, mental hospitals, and schools, older persons have found it more difficult to make unilateral decisions when those decisions directly involve important and often fundamental interests of children.

The changes wrought in education provide a clear example of how the child advocacy movement has worked. Schools, for most of their existence, have been free of judicial intervention. Courts, pleading lack of expertise, were wary of interfering in the discretion school officials exercise to control and educate their young charges. But in 1969 untrammeled immunity from judicial scrutiny may be said to have ended with the Supreme Court's decision in *Tinker v. Des Moines Independent School District*. (2) Three teenagers, part of a group of adults and fellow students, decided to publicize their opposition to the Vietnam War by wearing black armbands to classes. The principals of the Des Moines public schools learned of the plan and instituted an anti-armband regulation that required removal of the armbands or, in the alternative, suspension. The students persisted in their symbolic protest and were sent home until they agreed to come back to school without their armlets. The federal district court and the court of appeals upheld the system's right to issue the regulation saying it was reasonably related to the school's power to prevent the disturbance of classroom discipline. Taking a different view, the Supreme Court reversed the two lower courts, declaring that the wearing of armbands was closely allied to the expression of "pure speech," a fundamental right, the abridgement of which by governmental action (schools are considered agents of state government) required the most compelling of reasons. The Court could find no such compelling reason in this case as no evidence of any substantial or material disruption of the school by the students had been presented. In invalidating the administrators' regulation the Court asserted:

> In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the state must respect. . . . Students may not be regarded as closed-circuit recipients of only that which the state chooses to communicate. They must not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally-valid reasons to regulate their speech, students are entitled to freedom of expression of their views. (2)

At about the same time that students were winning the battle for free speech, other advocates were "intervening on behalf of children" so that they could attain the prerequisite for such expression—entrance to the schoolhouse door. Although the Supreme Court had declared in 1954 that an educational opportunity "be made available to all on equal terms," (10) many children, particularly those with special

needs, were being systematically excluded from the classroom and denied state-mandated, free public education. Two basic arguments were used by school districts to deny these children—typically handicapped or otherwise exceptional—an education. The first was the proposition that some children were ineducable or untrainable and therefore did not belong in the public schools. The second was that even if such children could be accommodated, the financial costs would be so great that it would be an unwarranted burden on the schools. These arguments were undercut by judicial action in two now famous cases, *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth* (11) and *Mills v. D.C. Board of Education*. (12)

The federal district court in Pennsylvania, relying heavily on the expert opinions of special and general educators and psychologists, ruled that all mentally retarded children were capable of benefiting from training and ordered the state to provide them a free educational program. In addition, Pennsylvania voluntarily agreed it would no longer classify any child as ineducable or untrainable. The rights won by retarded children in *PARC* were soon extended in *Mills* to all children regardless of handicap. The District of Columbia Board of Education had contended that insufficient funds made it impossible to provide a publicly supported education for every kind of exceptional child. The court did not agree. Even if money were a relevant consideration, it said, the interest of the government in conserving financial resources was outweighed by its responsibility to educate excluded children. Furthermore, to provide free public education to some children and to deny it to those labeled exceptional was a violation of both due process and the right to equal protection of the laws under the Constitution.

In fighting for the proposition that no child is ineducable, child advocates have contributed to a significant redefinition of education. No longer may education be defined solely in terms of academic instruction or the capability of a child to master a normal scholastic program. Its meaning has now been broadened to include any kind of training that a child might need. As a Maryland judge in a recent "right to education" suit defined it, education is "any plan or structured program administered by competent persons that is designed to help individuals achieve their full potential. . . . Every type of training is at least a subcategory of education." (13)

Due Process

In addition to the substantive right to education, children have been accorded many procedural guarantees prior to their removal from regular educational programs. Both *PARC* and *Mills* provide for elaborate safeguards before children may be assessed, labeled, and placed in special programs that take them out of the educational mainstream. Other parent and advocacy groups have won or are currently struggling to achieve similar rights throughout the country. The notice and hearing procedures vary from state to state, but where these rights have been secured it is now generally required that parents receive written notice of any proposed changes in their children's educational status and the reasons for the proposed changes, and that they have the opportunity to challenge the school's recommendations and to present evidence to substantiate the validity of alternative placements at an impartial hearing. Further, parents have additional rights to: legal representation to advocate their interests and those of their children; examination of records; appeal of the decision to the courts; and periodic review of their children's assignment. These due process rights are grounded in the constitutional doctrine that governments may not stigmatize persons without a proper hearing. When school systems label children as retarded, disturbed, or brain-damaged, the courts have viewed such action as an "official branding" with both direct and collateral long-term consequences, triggering the requirement for due process.

Similar battles have been fought to protect children from arbitrary and irrational disciplinary actions by school administrators and teachers. As a result of a series of federal court decisions, it is becoming increasingly evident that children barred from school on the ground of misconduct can be disciplined only under regulations that are precisely written or that do not abridge fundamental constitutional rights, and then only by a process that conforms to demands developed under the due process clause of the Fourteenth Amendment.

Two examples from recent decisions will illustrate developments in the area. Students in a Texas school system were expelled for publishing a newspaper critical of the school administration. The regulation under which they were punished said: "The school principal may make such rules and regulations that may be necessary in the administration of the school and in promoting its best interests." The federal court criticized the measure because it was so vague and over-broad that it could be invoked arbitrarily to condemn constitutionally protected conduct:

> When faced with . . . drastic consequences (e.g., expulsion or lengthy suspension) a high school student has . . . a right to a clear, specific, normative statement which does not infringe on free expression. . . . School rules probably do not need to be as narrow as criminal statutes, but if school officials contemplate severe punishment they must do so on the basis of a rule which is drawn so as to reasonably inform the student what specific conduct is proscribed. (14)

In *Goss v. Lopez* (15), a 1975 decision that will probably rank with *Gault* and *Tinker* as a landmark children's rights case, the Supreme Court, for the first time, outlined the minimal procedures disciplinarians must engage in before they may suspend children from school. The litigation was initiated by nine children and their parents representing the class of all children suspended from the Columbus, Ohio, public schools (estimated in the thousands) from 1971 to 1973, but like all actions of this kind, it was brought with the aid of child advocacy groups. The students had been suspended for varying lengths of time and on varying bases following some nonviolent racial unrest in the junior and senior high schools, but in no case was there a hearing of any kind prior to the disciplinary action. The Supreme Court held that the failure

In permitting Amish parents to discontinue their children's schooling after eighth grade, the Supreme Court ruled in favor of the fundamental interest of the parents over that of the State. Justice Douglas, dissenting, wrote of the student's right to determine his own destiny.

to accord some rudimentary due process, however informal, before suspension was unconstitutional. Specifically, it ruled that with respect to suspensions of ten days or less, due process required that students be given oral or written notice of the charges against them, and, if the students should deny those charges, an opportunity to hear the evidence the authorities have against them and to present their own version of the facts. Because only short-term suspensions were at issue, the Court reserved for another time any decision with regard to long-term suspensions or expulsions, although it implied that procedures might be more stringent.

Children's Choices

Kleinfeld has distinguished between the right of persons to make various choices and the right of persons to be protected from the choices or initiatives of others. (16) The legal precedents cited above represent only the limited kind of child advocacy falling primarily within the latter category. Notwithstanding the salutary effect of these decisions, children remain, like Ellison's hero, Invisible Persons whose views are infrequently evoked and whose wishes are rarely controlling. A little-known case of no apparent significance symbolizes the problem. A group of prisoners in a Suffolk County, New York, jail found and tamed a mouse, which they affectionately named Morris. A guard discovered Morris and unceremoniously flushed him down the toilet. The inmates filed a complaint against the warden alleging that Morris's due process rights had been violated. The judge ruled against the prisoners, finding that they were also guilty of imprisoning Morris without a charge, without bail, and without trial. (17)

If the implication of the case with respect to child advocacy is not clear, let me explain. The guard is analogous to those adversaries of children who presumptively deprive them of liberty or happiness. But, like the prisoners, their counterparts who populate the child advocacy movement may be equally culpable in abridging children's rights. In what may be called benevolent intervention, they fight for what they believe are in the best interests of children, but in the process they forget to ask the children themselves what they prefer.

That the Supreme Court may at times be guilty of similar conduct is exemplified in *Wisconsin v. Yoder*. (18) There, the Court upheld the right of Amish parents to violate state compulsory education laws and to keep their children at home once they completed eight grades. The exemption, the Court felt, was necessary to the free exercise of religion. In its positive light, the decision may be seen as allowing at least a limited class of parents the right to make decisions concerning family life, even though they may interfere with a long-acknowledged state interest, in this case compulsory education. On the other hand, it may be seen as another instance of adults generally failing to afford children the opportunity to articulate their own interests. Chief Justice Burger, who wrote the majority opinion, saw the case as involving only the "fundamental interests of the parents, as contrasted with that of the State." Justice Douglas, writing a dissenting opinion, was the only member of the Court to recognize that the critical interests at stake were those of the children:

> On this important and vital matter of education, I think the children should be entitled to be heard. While the parents . . . normally speak for the entire family, the education of the child is a matter on which the child will often have decided views. . . .
>
> It is the future of the student, not the future of the parents, that is imperiled in today's decision. . . . It is the student's judgment, not his parent's, that is essential if we are to give full measure to what we have said about the Bill of Rights and of the student to be master of his own destiny.

Those who simply advocate greater representation for children fail to acknowledge the complexity of the concept. To "represent" is not to engage in a unidimensional activity. Parents as custodians, the state as protector, and advocates who seek to act in what they perceive to be in the best interests of children "represent" only in the sense of taking care of another. They may be said to act merely "in behalf of," that is, in the interest of, or for the benefit of, another. Those who act "in behalf of" are under no obligation to consult with their beneficiaries or abide by their wishes. They do what they think best in the light of their trust obligations. They are free from having to be ruled by the wishes or opinions of those they nominally represent. Such a role is different from acting "*on* behalf of," which connotes that the advocate is acting on the part of, in the name of, another, or as the one represented might act. (19) If we are genuinely to urge the expanded rights of children, such advocacy must include the right of children to full-fledged participation in the decision-making process when their significant interests and future hang in the balance.

School psychologists rarely reveal to students the source of referral or the true purpose of testing. Any resistance by the student is often interpreted as lack of motivation, passive-aggressiveness, or anxiety

Educating Children to Choose

Do children have sufficient maturity and stability to make life-important decisions? Justice Douglas, to support his claim in *Yoder* that students not only had the right but the competency to be heard, cited the work of major developmental psychologists and sociologists such as Piaget, Kohlberg, Kay, Gesell, and Ilg to the effect that the cognitive capacity and moral judgment of young adolescents approximated that of adults. (20) Active litigators (7) and legal scholars (21) have suggested tailoring children's rights to developmental stages. Though it would be an arduous task requiring interdisciplinary cooperation, particularly among educational and developmental psychologists, there is little doubt that such a venture is warranted. The age of legal "infancy" is too long, in most cases from birth to 18 years, and the result is a denial of freedom that many children could enjoy effectively.

A proposition that could be more quickly implemented is that we reverse our current presumptions. Rather than assume that children are too young emotionally, experientially, and cognitively to make appropriate decisions, we can alternatively presume that children are capable of making those decisions no less disastrously than adults. Unless there is a significant risk of irreversible damage, or clear and convincing empirical evidence that at particular ages children do not have sufficiently developed skills to exercise discretion, parents and the state should not have the right to make unilateral decisions that meaningfully affect children. (7) The burden would fall on those wishing to deny the right of children to choose; it would not fall to children and their advocates to show that children are capable. Such a proposal is in keeping with the legal doctrine that rights can be deprived only after a showing of incompetency, as is true when those called mentally ill are no longer allowed to control their finances or when parents are required to relinquish custody of their children.

As they are presently constituted, schools by and large are authoritarian institutions. Not only is attendance demanded for a prescribed number of years, but school assignment, class placement, and curricular content are all determined by adults (in the roles of educators, parents, or judges). Schools can be likened to giant reinforcement-dispensing machines autocratically allotting privileges and punishments from kindergarten through graduate and professional school. But schools could be constructed to include children routinely and systematically in decisions that affect their lives. School personnel could model equal relationships, mutual disclosure, and ordering of priorities. The role of the school could be expanded so that it would develop decision-making skills in students. In short, schools could teach how to make choices.

Involving Children in School Choices

A fundamental ingredient in decision making is obtaining the informed consent from those about whom decisions are being made. Genuine informed consent can be obtained only when those with whom we are working are explicitly and honestly presented alternatives and the opportunity to reject proffered recommendations. Such interaction rarely occurs in school settings where educators tend to act more in behalf of children rather than as the children themselves would prefer to act.

The testing and placement process that occurs in many special education programs is an excellent example of the kind of manipulation, obfuscation, and fraud school personnel can practice on children. My experience in school psychology reveals that teachers are likely to refer children to the tester—typically a school psychologist—without advance notice to, or consultation with, the test-takers. School psychologists then assess these children, often without revealing either the referring person or the true purpose for the evaluation. One can only imagine a tester saying to a child, "You are being evaluated today because your teacher finds you a highly disturbing individual and seeks to have you removed from her class. My job is to see if that is possible. If you do not behave within certain acceptable limits on the tests I am about to administer, you may be transferred to an adjustment program, a class for the retarded, or be excluded from school. The choice of alternatives depends upon how deviant your scores are from certain norms."

While that statement may accurately reflect the real reason for testing, the psychologist makes no such disclosure. Rather, the evaluator enlists the child's aid in this secret process by engaging in what is benignly called "rapport building." As Fischer has perceptively remarked, establishing rapport is essentially a method for doing things to clients to evoke the behavior that interests the clinician. The clinician "motivates the person, makes him feel comfortable, and eases his anxieties so that the central stimulus can activate the relevant trait. Hence, despite recognition of rapport as interpersonal, we nevertheless regard it in practice as something the tester or counselor establishes unilaterally." (22)

Under the rationale of avoiding anxiety arousal, children are dealt with dishonestly. Rather than being told the actual reason for the evaluation, they are informed that they and the psychologist are going to play some games, and they believe that only games are involved. The result is an involuntary participant, ignorant of the goal of the assessment or the way in which the information may be used, tested by someone whose primary allegiance may not be to the child. (23) Any resistance to this procedure by children is not likely to be viewed as being evoked by the situation the adult has constructed; rather it is more likely to be seen as either, or a combination of, lack of motivation, passive-aggressiveness, anxiety, evasion, or paranoia.

Those kinds of naive and often damaging interpretations can be obviated by including both children and their parents in the evaluation process. Borrowing heavily from the work of Fischer (24), I have suggested elsewhere how ongoing mutual disclosure may serve to assess children's performance more fairly, accurately, and ethically. (25) Provided the psychologist makes every effort to engage the children in understanding all aspects of the testing procedure to the extent of the child's cognitive ability, there is no bottom age-limit for such an approach. In sum, the procedure contains three basic steps:

1. *Co-advisement.* This is an expansion of the principle of informed consent. The assessor tells the child and parents how the professional person functions, informs them of the identity of the referral agent, the purpose for referral, the nature of the assessment devices that will be used, the merits and limitations of those devices, what kinds of information will be put in a report, and who might eventually read the report. The assessor then asks the child to tell what he thinks the purposes of testing are and what he feels the consequences of such an evaluation might be. The assessor then requests agreement from the child and his parents to proceed with the assessment. If the child refuses, he should not be evaluated. Even if he were tested, the results would be distorted unless interpreted in the light of a coercing psychologist evaluating an unwilling child. Parental refusal, when the school genuinely believes a child needs help, might trigger a neglect proceeding leading to the appointment of a surrogate decision maker.

2. *Sharing Impressions.* Immediately after administration of the evaluation instruments, the assessor, the child, and the parents engage in a dialogue in which the assessor gives his interpetations of the child's behavior as the assessor has just experienced it. Such a dialogue provides immediate feedback to the child about how others see his behavior. It enables the assessor to check out how equivalent the test behavior observed is to actual classroom behavior and, if appropriate, to develop possible intervention strategies for the instructional environment. It allows the child to disagree with the assessor's initial interpretations and to offer his own perceptions about his behavior in different situations. Such an approach prevents the child from being mislabeled (or labeled entirely) and the interpretations of the child's behavior from being overgeneralized.

3. *Critique of the Written Evaluation.* To conclude the sequence of mutually disclosing events, the assessor's report is shown to the child and the parents. This insures that the written evaluation will be recorded in a way that is understandable to all concerned. In addition, this procedure prevents overstatements, unintended implications, and loose descriptions. Then the child and the parents are given the opportunity to clarify the points made, to add further material, and, if there is disagreement, to provide a dissenting view, in writing if wished. Finally, the assessor receives permission to send out the report to those whom the child and the parents agree would be appropriate recipients.

There is no doubt that this kind of more direct participation of children in psychological assessment and in other educational decisions that influence their lives—like skipping grades, observing dress codes, making school rules—will affect the administration of the school. Disruption of the educational process has been the primary defense of school officials whenever parents or children have sought to monitor the conduct of administrators or increase their involvement in official decision making. The most recent instance of the invocation of this defense was observed when parents sought and were afforded the right under federal law to inspect their children's school records. But the impairment of administrative efficiency has never been an adequate rationale in a democratic society for depriving persons of their constitutional prerogatives or statutory rights.

Involving Children in Family Choices

I have also suggested how the right of the child to make choices may be implemented on the domestic scene. (26) In this regard I have advocated that when parents divorce, children be allowed to choose their custodial parent and that the child's preference, within certain specified limits, be controlling. The conclusiveness of the presumption in favor of the preference would vary as a function of the child's age and parental acceptance of the chosen role. Thus, the basic question that would confront a court in these matters would be this: Which parent wants the child, and which parent does the child want? The consequence of such an interrogation is to remove the courts from making determinations on the basis of fitness and judicially perceived best interests and to rely solely on the judgments of the choosing child and wanting parent.

Given the preference for placing a choosing child with a wanting adult, a variety of outcomes are possible (all based on the assumption that the child's choice has not been coerced). Three situations exemplify how the process might work.

1. When custody is not in dispute and the child's wish matches the custodial arrangement made by the parents, the court would be limited to ratifying the agreement.

2. When custody is in dispute and the child has a stated preference, the child's preference would be honored unless the non-chosen parent is able to meet certain evidentiary tests. The stringency of these tests would vary as a function

of the child's age.

Ideally, the ability of a child to make a sound custodial preference should be based on an individualized evaluation and judged according to universally accepted criteria whose referents are observable and verifiable. Such criteria are lacking both in the law and the behavioral sciences. Thus, while it would be in keeping with the guidelines I have suggested above that the child's right to make a conclusive choice should be contingent on reaching certain developmental stages, I have chosen age 12 to make certain distinctions in the absence of more definitive evidence. At that age children have demonstrated empirically that they can make choices roughly equivalent in maturity to that of adults, and they are rapidly gaining the physical status of adults.

Thus, when a child is beyond his 12th birthday, the child's parental preference would be controlling, unless it is shown that the preferred parent has engaged in criminal behavior toward that child. If a child is not yet 12 years of age, the child's wish would be controlling unless the non-chosen parent could show that placement with him or her would provide predominant advantages essential to the child's development unobtainable to a substantial extent with the preferred parent.

In both cases, the presumption is that the child's interest is best measured by himself. Given the incapacity of either science or law to predict future behavior, critical flaws in the "best interests" doctrine (acting in behalf of another), and the apparent arbitrariness of courts when called on to choose among fit parents, it seems more rational to allow the private ordering of a parent-child relationship and to encourage the policy that the one most affected by a decision be the one to make the choice.

3. When a child refuses to go with either parent, we are presented with a rare but most dramatic problem. Courts have developed procedures for dealing with the situation of two non-wanting parents, and there are means for placing children who are no longer desired by their parents. But what of children who want to "divorce" their parents? Here, a clearly adversary situation presents itself in which a child may need independent legal representation and status as a full-fledged participant to advocate his wishes. Recent literature has outlined the fallacy of assuming that biological parents should be the preferred custodians (27), and if it becomes accepted that children have a right to choose their caregivers (28), vigorous advocacy of non-parental custodians may become commonplace.

Progression

When a class of persons is granted a right, another class is often denied a complementary right. (29) It is evident that advocacy of increased parity with adults and the expansion of children's power to make decisions concerning their own lives diminishes the rights of parents, schools, and other state agencies to make those decisions. There is genuine concern that such a diminution will result in the disruption of family life and increased administrative chaos in the schools.

But predictions of anarchy and disorder were used to prevent minorities and women from the full exercise of "personhood." There is no empirical evidence that the present expansion of children's rights has been responsible for altering, in a negative way, the fabric of American society. Those once legally considered infants now vote. Many states now allow adolescents to be treated for drug problems or to secure birth control advice and abortions without parental permission. (30) In some states children's choice of the preferred parent is already controlling in custody disputes. It may be more likely that delaying the right to make choices until some arbitrary chronological age will impair future decision making. By training children earlier to participate in critical determinations, we may develop children who can make more mature and stable decisions than adults do now.

Child advocates have been successful in securing increased recognition of children's special needs and their protection from the arbitrary discretion of others. These advances are relatively easy to obtain because they do not presuppose judgments about the intelligence or maturity of those protected. (16) The more difficult but necessary next step is to advocate for the right of children to make their own choices and to experience the consequences of their own action. This kind of advocacy requires that those who participate in the children's rights movement shift from advancing children's best interests as adults perceive them, to giving "mature, articulate, intelligent, and persuasive voice to the child's expressed wishes." (31) Schools and other institutions that can serve as potential advocates can help promote the efficacy and cogency of children's decisions and their involved participation by providing increased opportunities for the training and development of independence.

Notes

1 387 U.S. 1 (1967)

2 Tinker v. Des Moines Independent School District, 393 U.S. 503 (1969)

3 Rule v. Geddes, 23 App. D.C. 31 (1904)

4 See James Ellis, "Volunteering Children: Parental Commitment of Minors to Mental Institutions," *California Law Review* 62 (1974): 840. But a case recently decided in a Pennsylvania federal court, Bartley v. Kremens (E.D. Pa. July 24, 1975), striking down a state statute enabling parents summarily to place children in mental hospitals as unconstitutional may herald the end of this practice.

5 State v. Bailey, 157 Ind. 324, 61 N.E. 730 (1901).

6 Prince v. Massachusetts, 321 U.S. 158 (1944)

7 Patricia Wald, "Making Sense Out of the Rights of Youth," *Human Rights* 4 (1974): 13.

8 F. Pollock and F. Maitland, *The History of English Law*, vol. 2, Boston: Little, Brown, 1899.

9 Alfred Kahn, Sheila Kamerman, and Brenda McGowan, *Child Advocacy—Report of a National Baseline Study*, Washington, D.C.: U.S. Department of Health, Education and Welfare, 1973.

10 Brown v. Board of Education, 347 U.S. 483 (1954)

11 334 F. Supp. 1257 (E.D. Pa.), 343 F. Supp. 279 (E.D. Pa. 1972)

12 348 F. Supp. 866 (D. D.C. 1972)

13 Maryland Association for Retarded Children v. Maryland, No. 77676 (Md. Cir. Ct., Baltimore County, April 9, 1974) (Clearinghouse No. 12,451)

14 Sullivan v. Houston Independent School District, 307 F. Supp. 1328 (S.D. Tex. 1969)

15 419 U.S. 565 (1975)

16 Andrew J. Kleinfeld, "The Balance of Power among Infants, Their Parents, and the State," *Family Law Quarterly* 4 (1970): 320.

17 Christopher D. Stone, in "Should Trees Have Standing?—Toward Legal Rights for Natural Objects," *Southern California Law Review* 45 (1972): 450, un-

earthed the case, Morabito v. Cyrta, 9 Crim. L. Rep. 2472 (N.Y. Sup. Ct., Suffolk Cty. (1971).

18. 406 U.S. 205 (1972)

19. Hannah Pitkin, *The Concept of Representation*, Berkeley: University of California Press, 1967.

20. Jean Piaget, *The Moral Judgment of the Child*, London: Kegan Paul, 1932. D. Elkind, *Children and Adolescents*, New York: Oxford, 1970. Lawrence Kohlberg, "Moral Education in the Schools: A Developmental View," in R. E. Muuss, ed., *Adolescent Behavior and Society*, New York: Random House, 1971. M. Kay, *Moral Development*, New York: Schocken, 1969. A. Gesell and F. Ilg, *The Years from Ten to Sixteen*, New York: Harper, 1956. Not all scholars agree with Justice Douglas. See D. M. Baer and J. C. Wright, "Developmental Psychology," in *Annual Review of Psychology*, vol. 25, Mark Rosenweig and Lyman Porter, eds., Palo Alto: Annual Reviews, 1974; Martin L. Hoffman, "Moral Development," in *Manual of Child Psychology*, vol. 2, Paul Mussen, ed., New York: Wiley, 1970. Their arguments center on the failure of adolescents to demonstrate the judgment and moral development theoretically possible in adults. There is little evidence, however, that the ultimate stage is usually reached by adults themselves.

21. E.g., Edward T. Ladd, "Civil Liberties for Students - At What Age?" *Law and Education* 3 (1974): 251.

22. Constance T. Fischer, "Rapport as Mutual Respect," *Personnel and Guidance* 48 (1969): 201.

23. Donald N. Bersoff, "School Psychology as 'Institutional Psychiatry,'" *Professional Psychology* 2 (1971): 266.

24. Constance T. Fischer, "The Testee As Co-Evaluator," *Counseling Psychology* 17 (1970): 70 and "Collaborative Psychological Assessment," in *The Prometheus Principle: Informed Participation by Clients in Human Services*, C. Fischer and S. Brodsky, eds., New Brunswick: Transaction, forthcoming.

25. Donald N. Bersoff, "The Ethical Practice of School Psychology: Rebuttal and Suggested Model," *Professional Psychology* 4 (1973): 305.

26. Donald N. Bersoff, Note, "Advocating Representation for Children in Custody Proceedings: All That Glitters Is Not Gault," *Yale Law Journal* 85 (1975), forthcoming. Other situations consider cases in which the child, although capable of stating a preference, has none or wishes not to make one; when the child is either too young or is incompetent to exhibit a preference; when the child's preference is at odds with the parental agreement.

27. Joseph Goldstein, Anna Freud, and Albert J. Solnit, *Beyond the Best Interests of the Child*, New York: Free Press, 1973.

28. John Holt, *Escape from Childhood*, New York: Putnam, 1974.

29. W. Hohfeld, *Fundamental Legal Conceptions*, New Haven: Yale University Press, 1919.

30. See generally, Note, "Parental Consent Requirements and Privacy Rights of Minors: The Contraceptive Controversy," *Harvard Law Review* 88 (1975): 1001.

31. Stephen Wizner, "The Child and the State: Adversaries in the Juvenile Justice System," *Columbia Human Rights Law Review* 4 (1972): 389.

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The Great Sorting Machine

The case for identifying less restrictive categories and beginning a "desorting" process for the handicapped

The first time anyone ever sorted anyone else may well have been when God looked at Adam and Eve and pronounced them "very good." But schools have picked up the task where God left off. From their first weeks in school until graduation day, schools separate the "very good" (or very bright) from normal students, and "special problem" children from everyone else. The idea behind this practice is sensible – the school should reckon with differences in interest, ability, and motivation – but the practice is abuse-ridden. Early impressions – who's talented and who isn't – become 12-year prophesies; students get locked into programs that shape both their careers in school and their prospects after graduation. Part of the story of schools as "supersorter" – the way tracking or ability grouping affects supposedly normal children – has often been told. But retelling has not evoked notable change. And the plight of "special students," those cast to the bottom, or out of the system, is largely unknown.

Until 1967, tracking was the unchallenged king in the Washington, D.C., schools. The track system, adopted a decade earlier in the wake of a Supreme Court decision ordering integration, divided students into educational programs on the basis of test-measured ability. Gifted children, first singled out in elementary school, were placed in honors programs; the slowest were put in special academic classes; and everyone else wound up in a general category. The system's theory, expounded in a book authored by then-superintendent Carl Hansen, was straightforward: Tracking matches school offering to student need, providing "the maximum opportunity for self-development."

In practice, the Washington tracking system functioned badly. The aptitude tests it used to separate the wheat from the chaff called for definitions of such words as "shilling" and "mosaic," not part of the ghetto vocabulary. As a result, black students dominated the lower academic reaches, while whites filled the honors classes. In 99%-black Dunbar High School, for example, no honors program was offered, while in 94%-white Wilson High 12% of the students were enrolled in honors programs. The figures were almost precisely reversed for the basic programs: Ten percent of Dunbar's students but none of Wilson's were enrolled. The pattern was equally dramatic at the elementary school level. Seventy percent of all whites, but only 16% of all blacks, attended schools which offered an honors program. And the system locked students into tracks: Less than one student in 10 was reassigned during a school year. Rigidity, not "self-development," characterized tracking in Washington. Superintendent Hansen's tracks had become ruts.

Irate black parents successfully challenged that system. In *Hobson v. Hansen*, a lengthy and scholarly opinion, Judge J. Skelley Wright ordered the existing system "abolished." "Even in concept the track system is undemocratic and discriminatory," declared the judge. "[I]t is designed to prepare some children for white-collar, and other children for blue-collar, jobs. . . . The danger of children completing their education wearing the wrong collar is far too great for this democracy to tolerate."

But rigid student sorting did not disappear, either in Washington or anywhere else. The District of Columbia appealed Judge Wright's decision. Responding to a watered-down decree by the court of appeals, it changed the tracking labels and continued the old practices. Nationwide, Department of Health, Education, and Welfare and National Education Association surveys indicate that most school districts behave the same way. Four out of every five districts (the figure is almost 100% for the big cities) track students for at least part of each day on the basis of ability.

Sorting begins in the first weeks of kindergarten. Many districts administer reading readiness tests and assign students to fast or slow groups on the basis of their performance. No one quite knows what the test scores mean (imagine a talking readiness test, for instance). But, like the aptitude tests upon which later sorting decisions are made, reading readiness tests are relied upon heavily. They provide the appearance of objectivity. Their results appear more scientific and less prejudice-prone than informal evaluation.

Other factors enter into kindergarten sorting. Is the child used to talking with grown-ups and playing with other children? Is he neat and polite? These differences are very real. Some children arrive in kindergarten lugging sixth

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grade readers while others are still mastering shoelace tying. But the teacher, by segregating the brightest and best-mannered from the rest at the very outset of schooling, sharpens and confirms these initial differences. In teaching these ability groups, the brightest typically get more praise and attention; with the slowest, the teacher's energy is given over to keeping the children quiet and in their seats. School systems seldom label these groups "advanced" or "slow," but euphemisms like "the Tigers" and "the Clowns" convey the same message. Those tagged as bright pick up on the teacher's cues. In one St. Louis school a boy in the advanced group interrupted the recital of one of his slow-group classmates, saying over and over again, "I smarter than you. I smarter than you."

Such early sorting encourages teachers to think of students in terms of categories. "I've got five different tracks right in this class," commented a teacher in a school which had recently opted to abandon rigid grouping. In junior high school, if not earlier, those differences are formalized. Ability becomes the criterion for assigning students to different tracks. As a Boston principal observes: "By the end of elementary school, we know the bright ones and the dumb ones." Through this process, predictions made in the earliest years of school may become prophesies: Students assigned to the fast group in elementary school, and who continue to do praiseworthy work for several years, enter the honors track; slow-group students are likely to find themselves in one of the school's dead-end programs.

From the teacher's viewpoint, such segregation is the only way that instruction can take place; according to a National Education Association poll, seven out of every 10 teachers prefer tracking to random grouping. Tracking, they argue, doesn't leave the brightest students bored or the slowest frustrated. It permits teachers with talented children to loosen up their curriculum, offering lots of options while allowing teachers with less successful students to impose badly needed structure and rigor in the classroom.

Yet studies comparing student performance and attitudes in tracked and nontracked systems do not generally support this appraisal. Tracking doesn't seem to have much effect on the academic work of students, bright or slow. Professor Walter Borg, whose evaluation of ability grouping is perhaps the most careful undertaken to date, compared the performance of 4,000 junior high school students in two adjacent, comparable school districts, half of whom were tracked. Borg noted that "the relative achievement advantages of the two grouping systems were slight, but tended to favor ability grouping for superior pupils and random grouping for slow pupils. . . . The differences for average pupils did not consistently favor either grouping treatment." A similar study, undertaken in New York City elementary schools, yielded analogous findings: Narrowing the ability range in the classroom on the basis of test-measured aptitude does not notably affect student performance. Tracking does, however, give the slower student a more limited sense of his own capability. Maxine Mann, who studied elementary school children's attitudes, found that those placed in the lowest group consistently derogate themselves with such comments as "I'm too dumb," "We are lazy." Concluded Mann: Ability grouping is psychologically cruel to all but the top students. The National Education Association, after surveying 50 selected comparative studies published since 1960, found that "despite its increasing popularity, there is notable lack of empirical evidence to support the use of ability grouping as an instructional arrangement. . . ."

Although parents and students may be invited to discuss appropriate track placement, the school's guidance counselor in fact makes the decision, relying primarily on aptitude test scores and school performance. The racial impact of such a standard is profound: Black and poor students are concentrated in slow and special class programs, while whites enter honors programs in numbers at least double their proportion of the school population. In Boston's elite Latin School (the nation's oldest public high school), for example, only a tiny fraction of the students are black; there are 10 times as many blacks in the other Boston schools. In Oakland, California, one principal refused to set up a class for gifted children in his ghetto elementary school, despite the fact that state funds for such a class were available. "There are no gifted children here," he said.

Such episodes have made tracking a political issue. Black leaders accuse the schools of employing tracking as a tool of "racial genocide"; radical whites describe the system as a "means of class oppression." Sandwiched between planks of the 1972 Democratic Party

"People's Platform" calling for a $6,500 guaranteed annual income and immediate withdrawal from Vietnam was a demand for the abolition of "tracking and the discrimination that results therefrom."

Sometimes this discrimination is not accidental. One Louisiana school district, for example, sought to desegregate by converting its all-black school into the slow track of what it called an "integrated" school. In several southern court cases, judges have rejected similar "desegregation" plans. A young Philadelphia guidance counselor reports: "Until I came here, black kids were routinely told, 'You belong in the general track.'" But the counselor's decision is not usually based on bias or insensitivity. He relies on test and grade data (and, occasionally, persistent parental pressure) because, given responsibility for 500 or 1,000 students, that is the only data he has time to look at.

The decision made by the counselor has profound consequences for the student. It affects both what he will study in school – Shakespeare, Scarlet O'Hara, soldering (or, if the student is a girl, 60 words per minute) – and the college or job opportunities available upon graduation. Honors track students usually go on to college. Vocational students may find interesting work, if the school's program is attuned to needed market skills; but too many schools continue to train for nonexistent jobs in obsolete fields. General track typically serves as a place where students can mark time, doing only a modicum of work while waiting either until it is legally permissible to quit school or walking off with a diploma. Few students seriously challenge the counselor's recommendation, arguing that they can do honors work or that the vocational program would be better for them than watered-down general education. And fewer still realize that it is theoretically possible to change tracks in high school. Small wonder that the track system appears to lock the normal run of students into categories.

Some districts are beginning to experiment with less rigid arrangements. Baltimore, for example, has implemented a "stratified heterogeneous grouping" scheme which provides for some mixing of bright and slow students. The plan eliminates "top" and "bottom" groups while reducing somewhat the range of ability within a given classroom, allowing teachers to give special attention where needed without mystifying or boring other students. "Open classrooms" patterned after the British model, nongraded schools, and team teaching – all of these relatively novel approaches represent attempts to modify the strait-jacket sorting structure, to diversify the academic program while introducing elements of flexibility. Public school voucher schemes, such as the one Alum Rock, California, is trying out, provide a different kind of flexibility: They permit the student to opt for a structured or open education. In high schools, increasing elective courses or giving students real choice over their program accomplishes much the same end. While these ventures are encouraging, they remain unavailable to the vast majority of American students.

The plight of the seven million children who get labeled "special education" students is far worse. The Council for Exceptional Children estimates that one million of these children are excluded from all education as "ineducable," left to while away their days at home or placed in institutions which offer little more than food and shelter. In two 1972 landmark decisions, *Pennsylvania Association for Retarded Children* v. *Commonwealth of Pennsylvania* and *Mills* v. *Board of Education*, federal courts declared that all children are constitutionally entitled to an education; that right has not yet been generally implemented.

"Special" children lucky enough to get any education are often consigned to basement classes, isolated from everyone else. A Boston teacher reports: "The special ed kids couldn't even leave for fire drills until I reminded the administration that their bodies burn just as fast as anyone else's." And one parent, describing an all-too-common phenomenon, writes to the California Association for the Retarded that the school his child was placed in is "a little building, surrounded by a cyclone fence, off on a remote corner of a vast elementary school playground. There was even a cyclone fence gate across the front door."

The label "special" suggests who these children are: They're the children who don't fit into the school's regular categories. Special means those with physical handicaps – the blind and deaf and crippled – and emotional problems – students who act out in class, bully other students, or withdraw. Retarded children, who fare badly in their classwork and on standardized aptitude tests, are also special; the retarded category is subdivided into those deemed educable and those who are labeled as merely trainable. The non-English-speaking child who does poorly on English language tests, and the student who falls asleep in class because he hasn't had breakfast – these too are "special children" in the schools' eyes.

Special education began with a good idea. Children with potentially disabling handicaps – the 15-year-old who can't use a knife and fork, the multiply handicapped, the psychotic – do need particular attention. A normal school program offers little to them. And the needs of children with problems less severe but no less real – the child unable to do simple sums, for example – can better be met if they receive individual help for at least part of the school day.

But, between the idea and its implementation, something has gone terribly wrong. More and more special categories – the educationally handicapped, the educable mentally retarded – have been invented. Categorical state aid provides additional funds for these special programs, making them financial bonanzas for strapped school districts. "It makes no sense to have 18 kids here," a special education teacher admits. "But the district keeps telling me, 'We need the money, and there's no other place for these students to go.'" The categories themselves remain ill-defined. "I know an educationally handicapped child when I see one," said one psychologist – much the same comment as a Supreme Court justice made when asked how he determined whether a book was obscene.

James Herndon's *How To Survive in Your Native Land* sums up what happens to many special education students in harsh but accurate terms:

> All the terms for special kids really just mean kids who can't or won't or don't do things the way the school thinks they ought to be done. . . . The school's obvious inability to satisfy many children can then become natural, since the kids are "special" and shouldn't be satisfied by any normal procedures and the school does not need to change its ways at all, has only to create some arrangements on the outskirts of the school to keep them special kids and special teachers out of the way.

The ready availability of special pro-

grams for children with hard-to-pin-down "handicaps" provides teachers with a way of opting out of teaching those who cause trouble in the classroom. The trouble is real enough, but the teacher doesn't want the responsibility of overcoming it. Difficult children become *someone else's* responsibility.

On the very first morning of kindergarten, a California teacher spied the director of the school system's special education program. "Boy, do I have one for you!" she said. Why was this child special education fodder? Because he wouldn't shut up in class and refused to walk single file with the rest of the children. A Connecticut psychologist working with a third-grade teacher suggested a variety of ways to handle the problems of a particular child, but the teacher was uninterested. Out of desperation, the psychologist proposed assigning the student to a special class. That idea the teacher grabbed onto; for her, it was the only solution. In both instances, teachers saw special education as the only way of resolving a classroom crisis, rejecting alternatives less drastic in nature. And the examples are not atypical. As sociologist Jane Mercer observes: "The schools label more persons [with IQs above 70 and no physical disabilities] as mentally retarded than any other formal organization in the country."

Teachers generally don't like teaching slower children. The National Education Association's survey finds that only 7% of all teachers prefer such students. In many districts assignment as a special ed teacher is regarded as a punishment. "Next year," the principal promises, "we'll give you a regular class." Even in California, which requires that teachers be licensed to teach the retarded, special education assignments historically went to graduates of southern black teachers' colleges. "The public schools thought that these people weren't good enough to teach normal kids, but for special kids they were just fine," noted a Bay Area special education program director. Many special education classes function only as mass baby sitters.

Since school systems view special classes as a means of handling difficult children, they often mislabel students as retarded. One Massachusetts mother came in tears to her case worker: The school was putting her second-grader into special ed, she said, only because that's where the rest of her children had been placed. "My oldest knew more when he started school than he does now. He just sits there watching TV all day." The mislabeling problem is not merely anecdotal. When, pursuant to judicial direction, Washington, D.C., retested the special track children, it found that two-thirds of them had been wrongly placed and should have been in regular classes. A study of 378 mildly retarded students in 36 Philadelphia area communities reported similar results: Twenty-five percent of the children were clearly misplaced and an additional 43% were questionable placements.

The misassignment problem is particularly acute in the minority community. Minority overrepresentation in special programs is pronounced: In San Francisco, a city with a reputation for enlightened educational practice, slightly more than a quarter of the student population is black, while two-thirds of the EMR students are black; in Tempe, Arizona, Chicano children are even more grossly overrepresented in the EMR program.

Lawsuits in California, Arizona, and Massachusetts, all filed within the past four years, have challenged the placement of minority youngsters in EMR classes. In each case dozens of students were retested, and dramatic margins of school-made error were reported. Several Chicano students, retested in Spanish, turned out to be gifted, not retarded. Officials in those states have agreed to reshape the special programs and develop aptitude tests appropriate for minority children. One California case, *Covarrubias* v. *San Diego Unified School District*, in 1972 resulted in the award of nominal money damages to Chicano children assigned to EMR classes; a second suit, *Larry P.* v. *San Francisco Unified School District*, provoked a court order halting the assignment of black students to EMR classes until a racially unbiased test could be prepared.

Draft regulations, which HEW drafted in 1972 but never formally circulated, would have required all school districts receiving federal assistance to establish outside review committees – composed of parents, professionals, and students – which would consider in detail the records of any student whom the district wishes to place in a special class, and make case-by-case recommendations. Both these proposed regulations and the court cases begin to develop procedures designed to protect individual students against arbitrary and sometimes disastrous school-made decisions.

Being mislabeled is unfortunate enough; what is most frightening is the fact that a child, once labeled special, is likely to find assignment in a special program a one-way ticket. His progress is seldom reevaluated, and the demands the school makes of him are so slight that even if he performs well in the special class he falls farther and farther behind his normal classmates. Only one child in 10 who gets branded "retarded" ever returns to regular classes.

For students and their parents, placement in special classes poses real psychological problems. The "special" label is supposed to shield. In fact, it becomes a term of derision. Special class teachers, informed that they are teaching subnormals, expect little from them. As one high school student comments: "Generally, teachers in special classes make kids feel dumb. Their attitude is, 'Well, nobody's been able to do anything with you, and I can't do better.'" That message – you are not as good as normal children – is picked up both by other students (listen to the insults tossed around on any school playground) and by the special students themselves. The child labeled special comes to recognize, as sociologist Erving Goffman observes, that the image of himself "he thought he possessed was the wrong one, and that this lesser one is really his." A mother of a retarded child says much the same thing:

> Let's face it: Children can be real cruel. I feel for the most part the youngsters that are in those [special] classes and retained suffer a great emotional handicap. It's as if they have a sign around their neck for everyone to read. Bill is being retarded in special education. He doesn't like being labeled as retarded. It's affecting him. He begs us to have him removed from that class. . . .

Abandoning all sorting, pretending that everyone is really alike, provides no solution to these problems. The task is to identify less category-bound, more flexible means of handling the particular difficulties of individual children; and that, in turn, may involve major changes in instructional approach for all students. School districts scattered across the nation are beginning to try such approaches. In the Franklin Pierce School District, just outside Tacoma, Washington, the school district invited a group from Puget Sound College to run their special education program. During a five-year period almost all the children

who had been in special classes – including those labeled trainable mentally retarded and autistic – have been placed in regular classes. After some initial resistance, everyone seems happy with the idea, and the children are doing well.

How was the transformation accomplished? "We picked someone from each school who had a reputation as a good teacher and showed them how they could help classroom teachers with a whole range of student problems," reports Dan Kelleher, one of the project's founders. "Now the teacher has some help – something that she's previously lacked. Some students spend part of each day away from the classroom, working on a one-to-one basis to resolve some special difficulty; after a few weeks of such assistance, those students spend all their time in the regular class. Over the five-year period, only four to five students didn't do well with that arrangement and had to have full-day special instruction." By then the only real complaints about the program came from parents who moved into the district. "They've been brainwashed to believe that their children are so different that they need a special class."

A somewhat different venture, based at George Washington University, has had similarly dramatic success. The Diagnostic/Prescriptive Teacher Program places student interns as "resource people" in a host of nearby school districts. "When the teacher says, 'I want this kid in special ed,' we try to help figure out what caused the breakdown in the teacher-student relationship," says project director Bob Prouty. The intern assigned to a school observes in the classroom and works individually with the student to develop a means of easing the conflict. The proposed strategy – which typically affects not only the problem-causing student but the entire class – is tried out in the classroom. "And usually it works," notes Prouty. One administrative area in Fairfax County, Virginia, where many of the George Washington students were initially placed, has phased out all but two of its elementary classes for the educable mentally retarded.

Returning special students to regular classes imposes enormous new burdens on teachers: They are being asked not to lead a string ensemble but to conduct Mahler's "Symphony of a Thousand." Success in that ambitious venture requires, at a minimum, training teachers to cope with a far broader range of student ability and skills, and providing funds for specialists who can work with both students and teachers in overcoming particular diagnosable problems. The notion sounds expensive, but it doesn't have to be. The Franklin Pierce program, for instance, is run on the same budget that previously supported special class instruction.

These successes suggest that children who appear different need not be sheltered from the demands of the society. The World Health Organization said the same thing two decades ago. "Overprotection should be avoided. . . . [P]rotective legislation can easily become self-protective, guarding the right of those with vested interests in one or another category of handicapped persons rather than the persons themselves."

That message is just now beginning to register, as a few pioneer districts experiment with ways of replacing the old lock-in, dead-end system with an approach as varied and flexible as children themselves. If "de-sorting" proves more than a passing fancy, "special" students may find themselves out of their basement classrooms for good.

Over the next decade, many of the present-day categories – tracks, special education programs, and the like – may well be modified, in response to the perceived shortcomings of school sorting. The pattern of change will vary from school to school, district to district, as teachers and administrators (voluntarily or under coercion) experiment with less rigid and formula-bound ways of discriminating, in the positive sense, among their diverse clientele. We may never be able to detect whether such reforms have any effect on student achievement. But they will alter the culture of the schools, rendering them more humane and pleasant places, and that goal merits pursuit in its own right. □

Special Education in Denmark

➤ Elementary education programs in Denmark were reformed by a decision made by the Danish Parliament on May 30, 1969. The Ministry of Education, under these reform measures, developed two innovations which now permit handicapped children to remain in their normal school environment. School psychological services are now the coordinating link between the school and those agencies which provide other sorts of needed therapy.

The Team – School psychological services (for a group of pupils not exceeding 5,000) include a chief psychologist; two assistant school psychologists and two clinical psychologists; educational consultants for backward readers, pupils with physical handicaps, the hard of hearing, hospitalized children, those with speech handicaps and the emotionally and socially handicapped; a curator's office; and a social worker.

This team cooperates with the educational leader of the county educational center for severely handicapped children, the heads of observation schools and special day schools, the consultants for the visually handicapped, and school doctors and family workers.

A background team of this nature ensures that the special teacher can obtain expert assistance in spheres where his own basic training proves insufficient.

Observational Education – Observational education includes a number of short- and long-term facilities at the disposal of pupils who are not functioning well in normal primary school education.

Observational education in the class and observation clinics include relatively short-term measures, at all events temporary and often part-time. They can be regarded as alternative solutions which can nevertheless (in the case of big schools) function concurrently.

Observation schools (boarding schools), on the other hand, provide the only form of special education that offers temporary residence outside the daily environment. All schools should be able to make use of this facility. Accordingly, more observation schools will be established on a county basis or with collaboration among several boroughs.

Observation classes and special day schools are both measures available for children who have need of long-term, full-time education and special educational treatment. Special day schools of this type also provide opportunities for providing recreation and therapeutic programs in addition to education.

(This information was contributed by Mrs. Inga Nilsson, consultant in special education, Copenhagen, Denmark. I. Skov Jorgensen, superintendent of special education; Birgit Dyssegaard, school psychologist; and Hennk Helsted, assistant head of department, Ministry of Education, wrote the article from which the item was abstracted. – *The Editors*)

12. IQ Tests and Testing

"Placement devices, and even the concept of separate placement, are increasingly under challenge. The primary device used for screening and placing children in special classes is the so-called standardized individual intelligence test. Respected school officials and psychologists admit that the IQ tests are inappropriate to measure the intellectual capacity of many minority children.

"A child diagnosed by these tests as having limited capacity frequently is treated as retarded for the rest of his often abbreviated education. Part of the tragedy of such labeling is that teachers who believe a child to be of limited educability tend to lower their expectations of the child accordingly. Then the student usually acts out the label by performing at or below the expected level, even if he is able to do better.

"The label of retardation can have serious, debilitating, and lifelong effects on the labeled person. A labeled person becomes subject to special discrimination. He becomes a person (or nonperson) who is not heard, or, if heard, not listened to, or, if listened to, not heeded. He often internalizes society's judgment in shame, guilt, timidity, and unusual acquiescence to authority."

— *Silent Minority*, 1973 Report, The President's Committee on Mental Retardation

WHEN A CHILD is in danger of being declared EMR, those placement meetings that are "a rubber stamp for an IQ score" are especially frightening. Writing in 1973, Dr. Oliver Hurley of the University of Georgia commented on the use of the IQ test in the "evaluation" process. "[The] four step process — referral, evaluation, case meeting to certify or not certify the child as MR, committee meeting to make a placement decision — is what happens in a system with some degree of good leadership in special education and a realization of the serious impact of their decisions on the child's future. These are a minority of our systems. More often, the team consists solely of a psychologist who is required only to administer one test. Whether he observes the child in natural settings or administers diagnostic instruments is up to him. In effect, in most cases, the classification decision is the psychologist's. Operationally, this is so, even in those states which vest such authority in a local advisory council or case study committee. But worse, the decision may be based on a single sample of a child's behavior and the teacher's referral report. In fact, it has been this writer's experience that even in those systems which have a fairly sophisticated evaluation procedure and some attempt is made to develop a complete case study, prognostication and decision-making is based primarily on the child's performance on the intelligence test, with little regard for contradictory observational or achievement data. After all, state laws define MR in terms of an IQ test score. This problem is exacerbated in those systems which hire part-time psychologists to administer a Binet (IQ test) or WISC at the rate of five or six a day. In spite of all that has been written lately about the pitfalls of this system, the pattern of routine testing, labeling, and placement of children persists; in the vast majority of cases, the adaptive behavior of the children in settings other than the classroom is never evaluated. These so-called 'six-hour' retarded children who function normally outside of school are inappropriately stigmatized and inappropriately educated. This discrimination against minority or poor youth has led to a questioning of the basic structure of special education and to litigation in the courts."*

In Copper County, Craig Bailey got to talking about the IQ test in the business office one day. "It wouldn't be possible, as I understand it," he said, "to put these kids into classes if they didn't score below a certain point on the IQ scale. Now, I don't know much about IQ tests, but how come all those children slid in below seventy, if they aren't retarded?"

"Could be lots of reasons," Maggie told him. "For one, these tests depend heavily on a child's ability or willingness to talk to the person who's giving the test. These aren't group IQ tests, where the whole class sits down and writes in little books. They're individual tests kids don't write. They have to talk, put together puzzles, remember number sequences, answer questions, things like that. If a child doesn't feel like talking when he takes the test, he can forget it."

Craig got a good frown out of that one, knowing how shy many

*See pp. 339–41 for examples and details of some of the lawsuits that have been filed on behalf of "six-hour retarded children."

Long, Kate. Johnny's Such A Bright Boy, What A Shame He's Retarded, 1977, pp. 126-139. Copyright by Houghton Mifflin Company, Boston. Reproduced by Permission.

local children could be around adults. Still, it had been an inadequate answer to one more very complicated question. Somebody with a bunch of professional papers would have told Craig that Dr. Henry S. Dyer, a former vice president of the Educational Testing Service, has called IQ tests "psychological and statistical monstrosities . . . probably the most convenient devices ever invented to lead people into misinterpretation" of children's learning abilities. Craig could have heard that research psychologist Dr. Robert Coles has called IQ testing "an incredibly naive and simple-minded way of looking at human beings."

Or even that Alfred Binet, the creator of what has become the Stanford-Binet IQ test, said in the early 1900s that "some recent philosophers appear to have given their moral support to the deplorable verdict that the intelligence of an individual is a fixed quantity, a quantity which cannot be augmented. We must protest and act against this brutal pessimism. We shall endeavor to show that it has no foundation whatsoever . . ."

But, apparently, it doesn't matter who frowns on them, IQ scores are still the nuts and bolts of special ed placement in most school systems, particularly in retarded classes, perhaps because they are convenient, economical, and usually required by law.

Most of the Copper County special ed children were placed by means of the most widely used individual intelligence test in the nation, the Wechsler Intelligence Scale for Children (WISC). Other tests were sometimes used, but the WISC was definitely the big gun.

Danny, one of the special ed kids at Stockdale School, reminded Maggie that she ought to take another good look at the test itself, instead of just fussing about *who* was going to do the evaluation. Danny had gone to visit Buzz Murphy a few days before. Maggie asked him what he did there.

"Played with puzzles, and he asked me a bunch of dumb questions," Danny said matter-of-factly.

"Like what?"

"Like would I beat up a little kid," he recalled.

That afternoon, Maggie visited the Copper County Mental Health office to ask Buzz if she could borrow the kit labeled "Wechsler Intelligence Scale for Children." When she got home

and began digging into it, the process by which all those children had been declared retarded became a lot clearer.

An hour or so later, Maggie decided that the Wechsler must be one of the most carefully guarded secrets of the educational world. Otherwise, she didn't understand how it could be used to declare thousands of children retarded every year. It seemed to her that some parts of it read like science fiction. "You know what?" she asked Anita. "If somebody read this thing aloud on prime time television, it would be the educational equivalent of the release of the Pentagon Papers."

Buzz hadn't asked Danny if he would beat up a little kid. He had asked him what he would do if a child "much smaller than yourself" started beating on him. Then Danny's answer was rated from zero to two points, according to a list of "acceptable responses." Knowing Danny, he probably said he'd knock the kid flat. For that response, he would have received zero points. If he had said he would ask somebody to pull the kid off, he would have received one point. To achieve full credit, he would have had to say that he was going to reason with the kid, or something along that line.

That question appears in the "General Comprehension" section of the Wechsler. The entire test contains ten sections, five of which are intended to assess the child's "verbal" ability, five of which supposedly assess his "performance" ability. The "General Comprehension" section is "verbal."

"What is the thing to do if you lose one of your friends' balls (dolls)?" reads another of the Comprehension questions. A child who says he would look for the toy only receives half-credit for understanding the question. A child who tells his friend that he is sorry gets no credit for comprehension. If a child tells the test examiner that he would replace the toy, he gets full credit.

"What should you do if you were sent to buy a loaf of bread and the grocer said he did not have any more?" reads a third question. A child who says he would forget about it receives no credit for understanding the question. If the child says he would get biscuits instead, he gets full credit.

And then there is the one about what to do when you see a train

approaching a broken track. "Run like hell" shows no comprehension, while sticking around to warn the engineer gets two points.

The first five questions are judged by the degree of "responsibility" the child is willing to assume. In effect, he is judged by his willingness to conform or pay lip service to "nice behavior," as defined by the author of the test.

For each of the nine questions that rounds out this part of the test, the child must supply two answers to achieve full credit. These questions include such items as "Why is it better to build a house of brick than of wood?" "Why should women and children be saved first in a shipwreck?" "Why is it better to pay bills by check than by cash?" and, Maggie's favorite, "Why is it generally better to give money to an organized charity than to a street beggar?" One of the "unacceptable" responses to this last question is that beggars are prone to keep the money for themselves.

A second verbal section of the WISC, entitled "Similarities," is equally interesting. The general format of this section requires the child to tell the examiner how two pairs of objects are "alike." Again, responses are scored from zero to two points.

To begin with, the child is asked how a plum and a peach are alike. If he says they are good for you, he receives no credit. If he points out that they both have pits and skins, he receives one point. Only if he says that they are both fruits does he receive two points. The examiner is allowed at that point to encourage him to say "fruits." Although the questions are phrased in such a way that limitless responses could be correct, the bright child supposedly will understand that only one answer is right. Creative or unusual answers receive no credit or half credit, though they may be technically correct.

A child who points out the fact that beer and wine both produce dizziness receives only one point. The child who says they can both be bought in bottles receives no credit for perceiving similarities. To receive two points, he must classify them as alcoholic beverages. Along the same lines, a piano and a violin cannot merely have strings for two points. That response is only worth one point, as is saying that they both produce music. For full credit, the child must point out the fact that both of these are musical instruments.

Though perceiving similarities is definitely an intellectual

achievement, many educators have objected to this and other sections, pointing out the fact that children can be taught, sometimes within days, to classify objects in the manner required by the "similarities" section. Once again, lack of experience can handicap some kids, and it cannot be assumed that this section measures innate ability.

Several sections within the test are questionable in terms of the wording of the questions themselves. In a study under the direction of Dr. Janet Hardy, the Child Growth and Development Center at John Hopkins University examined the Wechsler protocols of poor black children and found that "many children were failing questions because they did not comprehend the syntax of the questions, the pronunciation of words, or the intention of the questions. Their answers were reasonable, but they received no credit."

Jerome Kagan, professor of developmental psychology at Harvard, charges that "if the Wechsler were translated into Spanish, Swahili, and Chinese and given to every ten-year-old in Latin American, East Africa, or China, the majority would obtain IQ scores in the mentally retarded range. It seems intuitively incorrect to conclude that most of the children are mentally retarded, with the exception of middle class Americans and Europeans."

The Psychological Corporation has published a revised version of the WISC. The test remains substantially the same. The "women and children in shipwrecks" question has been removed, and other arrangements have been made in various sections. The author now claims that his test can identify reading difficulties and learning disabilities, as well as retardation and brain damage. The standardization group now includes minority children, though the overall averages between the white middle-class group and the minority groups turned out to be as much as fifteen points. Although this revised but still dubious instrument is now available, the old version will undoubtedly continue to be used for a high percentage of evaluations.

Obviously, opinions vary about IQ tests as instruments for measuring anybody's intellectual capacity, just as opinions vary about the need to do so in the first place. This discussion of two sections of the WISC is to demonstrate that even the most respected IQ tests are far from being the reliable measure of inborn

ability they are so often assumed to be. Reading through the instruments that are used to obtain these scores can help one understand a great deal that isn't otherwise obvious.

Eleven-year-old Danny Brenner was one of the white Americans Dr. Kagan was talking about, but he wasn't exactly middle-class. He lived up on Bald Mountain, six miles around a lot of curves from Stockdale School. Like many of the mountain kids, Danny hadn't been down to town too much before he went to school. He had very seldom played with anybody besides his relatives.

Danny was only one of hundreds of children in Copper County alone who had been classified retarded by means of the WISC. The story of his progression from mountain farm to retarded class, however, was typical for that area.

When he wasn't in school, Danny's chief regret was that he couldn't be as ornery as he would have liked to be. If somebody could have harnessed his grin, his family would never had had to worry about an energy shortage. He took responsibility for the family garden, and sometimes his big brothers let him have some of their liquor. He was, Maggie heard, a crack shot with a rifle and would take off into the woods with his dog for days at a time. With his sandy brown longish hair, roughened hands, and perpetual squint, he was a right-there kind of kid.

Danny could usually take care of himself — except when he was in school. Anybody who had watched the alert youngster help his dad take apart the Dodge engine up on the mountain might wonder if the silent, slightly bumbly boy down at Stockdale School was the same kid. "Meaner'n hell when you cross him," reported Mr. Dillard. "Otherwise, he behaves himself, but I can't say if he's learning much."

Danny didn't like school worth a damn. He liked his teacher, but couldn't see any reason why he should be at school. Until he hit first grade, he had never ridden in a bus or read a book. He'd never lined up or sat in one place for hours at a time. At home, he knew the reason behind most everything he did. At school, he was constantly required to do things that didn't make sense to him at all.

Maggie wasn't around when Danny entered first grade, but she knew a lot of first-graders like him, so it was easy to imagine that when he came to school, like most children without middle-class experiences, he didn't know what to make of it. Trying to get used to all those other kids, and being confused about things like lining up, keeping quiet, and lunch tickets is bad enough. But it is very likely that Danny also just didn't understand what his teacher was saying. He may not have been familiar with the words and phrases she used.

She'd say, "Put a circle around the duck." He'd see a picture of a duck, but wouldn't understand how to put a circle around it. She'd ask if anybody had any questions. Though Danny may have had questions, he might not have known what the word "questions" meant. To him she might have been saying something like "Does anybody have any crayons?" And, if he *had* understood, he wouldn't have asked in front of all those strange people.

His teacher talked about things he didn't understand, had never seen. She read the class a story about a tugboat in the city. Danny had never even seen a rowboat in the country, and nobody explained. She asked Danny questions about the tugboat, and Danny just stared at her. She asked another child. So it went.

Danny's older brother Billy had gone the same route. Billy had become an EMR when he was in the third grade, a fact that didn't escape Danny's teacher. She watched the silent little desk occupant turn into a scrambling rascal on the playground, and sighed. "Just like his brother. It's a real shame."

From all reports, Danny fell further and further behind. Some of his classmates in the same boat would misbehave and get whopped. Danny just built a wall around himself. If anybody tried to shake him out of his world, he'd get mean. Cuss and sometimes kick. His teachers started talking about emotional problems.

When Danny was in the third grade, his parents got a mimeographed letter from the superintendent of schools. Their name had been ballpointed in, right after "Dear . . ."

DEAR MR. AND MRS. BRENNER,

We are making every effort to help each student in this school by placing him in classes that will enable him/her to succeed. In order to

do so, we will need to give individualized tests to determine the level of class needed by your child. Children found to be weak in basic subjects will be placed in a special class of approximately 15 students in order to give the teacher time to help each student.

We would like to have your child tested in order to determine his need so that we may properly place him. By so doing, we can be of greater service to each child who needs special help.

Please sign below giving your permission to test your child —— and assign him to a special class that will help him/her to make normal progress.

The superintendent's signature was mimeographed on the bottom.

When Maggie visited Danny's home, Mr. and Mrs. Brenner told her that when they received the letter, they simply didn't know what to do. They didn't want Danny going into "one of those classes," knowing how bad his brother felt about being there. But the paper said Danny needed some special tests. They figured the people down at the school board office knew a lot more about things like that than they did. If Danny was in trouble, they didn't want to stand in the way of help for him. So they signed the tear-off-and-send-back part, which read, "You may test and assign, if needed, my child as requested above."

"They're just going to give Danny some tests," they told one another. "If they try to put him in one of those classes, we won't let them."

But when they signed the test slip, they also gave permission to put Danny in special education. "Come fall," Mr. Brenner told Maggie, "they came and got the boy right out of his classroom and put him in with Billy. And we never had heard one word about what happened on those tests."

"Paul went down and talked to the superintendent about it." Mrs. Brenner nodded, straightening up in her chair. "Mr. Birdwell told me the boy'd scored low on that test," said her husband. "Said he wouldn't get the kind of help he needed if he stayed in fourth grade. Said the law says Danny needs to be in that class." Mr. Brenner folded his arms and studied Maggie's face to see what her reaction would be.

"So we let him stay there," said Mrs. Brenner. "If the superintendent says that's the best place for him, why he's the man who would know, I suppose . . . We certainly want the best for our boys."

Danny was outside working in the garden. Mrs. Brenner called him from the low porch surrounding the clapboard house. "Danny, show Miss Callahan the garden."

The Brenners' place was only about two acres, tiny for a farm, but its situation was spectacular. A whole series of ridges stretched off into the distance on two sides of the house. The mist lay low in the valleys, literally pouring from one to another as evening came on. Maggie walked down to meet Danny.

The garden was beside the woods. Danny pointed out various plants along the way, as well as the rows of vegetables he'd been putting in.

A bird began to sing. "Sounds like the mockingbird," said Danny. "He's around here every day about this time."

"Where?" Maggie swiveled her head around.

"Well, over there, in the mulberry tree . . ."

Maggie didn't know how to spot a mockingbird or a mulberry tree. Danny gave her a slightly incredulous look before diplomatically pointing to the mulberry tree.

Different kinds of learning Maggie reflected. Strange that we value one more highly than the other. To read, a person has to notice the difference between letters. He also has to see that not only are letters different, but some are the same. He has to see that all b's are alike in certain necessary respects and must give them all the name b before he can use them. Reading involves perception both of differences and similarities. But don't thousands of other activities? Danny could read the woods. Maggie was illiterate in comparison. What that meant to Maggie was that Danny shouldn't have had too much trouble learning to read.

"Look at how the trees are leaning around that one big tree," she wondered out loud.

"They're trying to get them a piece of the sky," Danny said perfunctorily. "Big beech is taking up all the sky. They got to lean out to get theirs." Danny smiled as he pulled a briar out of the path.

They walked back toward the house. Maggie noticed that he swung his arms as he walked. At school, he walked as if his arms were wired to his sides.

Inside the house, Mrs. Brenner had some coffee on the stove. "Miss Callahan, we were wondering how long Danny and Billy are going to have to stay in those classes," she said. "Billy was due to go on to the high school last fall, you know."

Mr. Brenner was sharpening a knife. He looked up. "We put a high value on education," he explained, touching his wife on the arm. "Neither of us graduated from high school, but we want at least that for our boys."

They smiled at each other. Maggie didn't know what to say, and Danny didn't say a word. Maggie had seen him that morning, wandering around his classroom while his teacher listened to one student read. The last time she had seen Billy, he had been watching "Sesame Street" with his entire class while his teacher knitted an afghan.

It would be incorrect to imply or assume that, if we could just develop a better test, problems would be solved. Though the tests definitely have their faults, they are also symptomatic of a whole system, and the best of tests depend a great deal on the way they are administered. Along these lines, Maggie thought back to the process by which Danny, Billy, and other kids had been declared retarded. The actual process of taking the IQ test, it seemed, could just about guarantee a poor performance. Test-taking procedures are often arranged for the convenience of the adults involved, and the Stockdale School procedure was a classic example. When children from that school were to be tested, Mr. Dillard got them out of their classrooms, two at a time, and told them they were going to play games with a handsome man. If several children from one classroom were to be tested, Dillard had been known to come in and write their names on the board, to the dismay of those children.

Two at a time, the children were walked three blocks to the Copper County Mental Health Center, where Buzz was waiting for

them. The Mental Health office happened to be next to the jail. "I thought I's gonna be put in jail," one wide-eyed little boy told Maggie.

While Buzz tested one child, the other waited approximately forty-five minutes in an outer room. The WISC manual states that children should be tested in comfortable surroundings. When children from distant schools were to be tested, they were brought to the Mental Health Center by car or else Buzz visited the schools. He complained that, when he visited the schools, he was not always given a suitable testing area. At one school, he was placed on the stage while gym classes were going on. At another, he tested kids in a hallway between two classrooms.

The WISC testing manual also says it is highly important that the examiner be a familiar person with whom the child feels comfortable. Although Buzz was a naturally warm person, he barely had time to test, much less make himself familiar to, these stranger-shy children, By the time they got to his office, they were often very nervous, frightened, or apprehensive.

"All I could think of was getting out of there," Danny remembered.

"I even had to miss recess," another child recalled wistfully.

The WISC manual states further that the child should not be pulled out of favorite activities, and that, if nervousness, anxiety, or other feelings prevent her from relating to the experience without noticeable strain, "it is best to discontinue the test and arrange for another appointment." But the psychologist or other testing agent — especially one who works on contract or covers a great many schools — isn't around every day in most school systems. So the child has one shot, and if that shot is missed, that's it. Many of the psychological reports in Copper County reflected such a state of affairs.

Once again, this situation generalizes to many parts of the country. "We take a Stanford-Binet test," writes Oliver Hurley of the University of Georgia, "which has been standardized on basically white middle-class youngsters with a certain style of language and we administer this test to youngsters who differ. They differ in a number of respects. One respect that some of them differ in is their

language. There's been a lot of work recently on something called black English. They also differ in another respect, and that is that many of the youngsters are not used to interacting with adults in the way that's demanded on the Stanford-Binet — that is, to say everything you can think of, everything about a subject (if you want to get full credit). So, when these youngsters come into a testing situation, and the tester asks 'What is a bicycle. Tell me all about a bicycle,' this is kind of a crazy question to begin with, from the child's point of view. His response is: 'let me out of here!' His best way to get out of here is to give the person a short answer, as short as possible. So he says, 'Oh, it's something you ride.' O.K., something as short as possible, and he does this continuously.

"There is some research that was carried on some years ago with youngsters who had been labeled mentally retarded, or at least failed the test — 'failed' in quotes. After analysis of the children's responses from a different point of view, the researcher found that these youngsters, once they realized that they were supposed to lay all of their wares out on the table for someone to see, that this is what we want, they then laid them out on the table for the psychologist to see, and their scoring on this instrument, therefore, increased dramatically. In addition, the social setting was modified in one instance that I can remember by the introduction of a second child, and the two children interacted, and the quality of language from those two youngsters increased dramatically.

"There has been research like this. I don't know what a 75 on a Stanford-Binet means when the child can go out and cope with his environment in the middle of Harlem."

In the past, once a child was in an EMR class he would probably wait a long time before an opportunity came to be transferred out. State law for Copper County at that time required that each child be retested after he had been in special education for three years. No program evaluation, but retesting. Danny was a three-year veteran, so he had just been retested when Maggie spoke with him about his session.

A lot of damage can be done within three years, Maggie thought. A child can be badly damaged within one year. He loses self-

confidence, maybe receives haphazard instruction, and falls far behind. At the end of those three years, he is retested with the same test, found to be below average, and returned to special ed.

It was a very vicious circle, a conviction without appeal, a kangaroo court, a self-fulfilling prophecy. All in the name of "helping" the children. Maggie asked the regional special education supervisor if any of the seven counties he worked with reevaluated children more often than every three years. "There's only one I know of," he said. "Of course, some counties don't hardly have the money for the initial testing, so it's not likely they'll be retesting every three years."

During a phone conversation with Sam Watkins, Maggie asked what he thought the extent of misclassification in the state was. Sam said he'd always considered misclassification a strange word, for two reasons. "First of all," he told her, "it implies that the problem would be solved if the kid were just taken out of one category and put in another one. But, second, how do you get people to agree on who's misclassified? Now, you've got some kids down there you say are misclassified. Take any one of them, and I'll bet you I could find somebody who'd tell me the kid is right where he belongs, somebody who agrees that he shouldn't be there, and somebody who insists you can only tell by the test scores. It gets worse when you get into more subjective areas like emotional disturbance." He paused and added with a bemused chuckle that somebody had told him that some congressmen were talking about doing a survey which would show exactly how many children in the country were misclassified. "Bet you they come with five pages of figures," he said before hanging up.

SOCIAL DETERMINANTS OF ATTITUDES TOWARD EXCEPTIONALITY

by
Faith Scofield and James O'Dell, Sr.
The University of Kansas

What determines how people view the handicapped child? How do peers feel about having a handicapped child in their classroom? What is the family's role in establishing a good social environment? The personal attitudes and beliefs of those people in the handicapped child's environment determine the social atmosphere in which he is nurtured. This unit presents a variety of social determinants that exist in the handicapped child's life space.

Teacher Trainee Outcomes

The teacher trainee will be knowledgeable of those people and environmental situations that affect social influence on the handicapped child.

Instructor Information

Prerequisites:

There are no specific prerequisites for this unit. The teacher trainee would benefit from the information found in the three units immediately preceding this unit.

Organization:

One reading is required in this unit. Based on this material, the teacher trainee will engage in class discussions as well as write a brief critique and a report.

Content Overview:

The reading provides information on the social experiences of a handicapped child. A written critique of the social attitudes toward handicapped children could be used to summarize the material in the reading and help the teacher trainee become familiar with the wide range of possible determinants that exist. Class discussion with individual teacher trainees reporting on the personal and/or observed attitudes toward the handicapped could convey some common biases and/or beliefs. A written report on ways of improving current attitudes toward the handicapped could provide some insight into possible avenues for change.

The content for the reading material on sociality is divided as follows:

1. Capacity-based problems and social experiences.
2. Social experience as a course of persistent and transient problems.
3. The exceptional learner and the family.

Suggestions for Teaching:

Two class sessions of approximately one hour each are recommended for completion of this unit. The first session could be organized to discuss the assigned reading. The second session could include time for student reports and discussion of positive and negative attitudes toward handicapped students.

Suggestions for Evaluation:

Staff judgement of the written projects and quality of class participation on assigned activities could provide adequate evaluation information for this unit.

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Prospectus

From infancy, children learn to fit into society with its rules and regulations. Children's values and beliefs are influenced by parents, peers, teachers, television heroes, etc. They are social creatures and are extensively involved with those around them.

Handicapped children are no different from non-handicapped children in their need for social experiences. However, some handicapping conditions are more visible than others and thus have more effect on the handicapped child's social experiences. The attitude—especially of "significant others"—influences the child's self-image and overall behavior.

This unit is designed to highlight the various social factors which are known to be influential in a handicapped child's life. The teacher trainee is asked to look at his own attitudes toward handicapped children and report on techniques that might be beneficial in effecting a change of attitude toward handicapped children.

This competency may be fulfilled by implementing the first objective and either objective two or three.

Objectives	Enabling Activities
1. The teacher trainee will prepare a brief written critique of the social determinants and attitudes towards handicapped children.	1. Reading 1: Hewet and Forness. 2. Class discussion. 3. Subgroup discussion.
2. The teacher trainee will reflect and report on personal attitudes he has observed in himself or others toward the handicapped.	1. Each teacher trainee will report on one positive and one negative attitude that he has encountered.
3. The teacher trainee will formulate a brief written report about what might be done to improve attitudes toward the handicapped.	1. Class discussion of tabulated list of attitudes.

Reading:

Hewett, Frank M. and Steven R. Forness. *Education of Exceptional Learners*, 2nd Ed. Boston: Allyn and Bacon, Inc., 1977, pp. 229-245; 249-264.

Regardless of how flexible exceptional learners become with respect to moving freely through the physical environment, they still must learn to relate and associate with others. In this chapter we shall focus on these "others" and their enhancing and restrictive roles in the lives of the handicapped.

The biological helplessness of early infancy initiates a dependence on other human beings and the beginning of a lifetime relationship of giving and taking, obeying and challenging, pleasing and displeasing, accepting and rejecting. Children learn to fit into a society with rules, traditions, expectations, beliefs, and values determined by others. They form close attachments and are influenced by parents, siblings, neighbors, peers, teachers, television personalities, sports heroes, scoutmasters, clergymen, and politicians. Human beings are highly social creatures and are intimately involved with others around them.

In discussing sociality, we shall first consider the reciprocal effects of capacity-based problems and social experience. Next we shall discuss persistent and transient problems that are largely determined by social experience. Finally, the family setting of the exceptional learner will be examined. Our framework for the discussion in this section is as follows:

1. Capacity-based Problems and Social Experience
2. Social Experience as a Cause of Persistent and Transient Problems
3. The Exceptional Learner and the Family

CAPACITY-BASED PROBLEMS AND SOCIAL EXPERIENCE

Some handicapping conditions are more readily visible than others, and as a result have a more marked effect on the social experiences of exceptional learners. The problems of the visually and hearing-handicapped, the crippled, the mentally retarded, the multihandicapped, and the hyperactive, learning-disabled child are particularly relevant in this regard.

Hewett, Frank M. and Steven R. Forness. Education of Exceptional Learners, 2nd Ed. Boston: Allyn and Bacon, Inc., 1977, pp. 229-245; 249-264. Reproduced by permission.

When visually handicapped individuals enter a room filled with people, their hearing enables them to gain information and maintain communication, but they are at a serious disadvantage in many respects. People may not talk; they may move away or enter the room without being heard. Comments directed toward blind individuals may go unnoticed unless they are specifically addressed by name. Thus, the social world of the blind can be an uncertain and frustrating one. It has been hypothesized that one reason blind persons encounter the problem of avoidance by other people is that many sighted individuals have a fear of becoming blind themselves, and this causes them to avoid situations that make them anxious.[1] In this regard, Connor and Muldoon state:

> Much of the disability of blind and visually impaired people is occasioned by restrictions, overprotection, rejection, unrealistic expectations, and the ignorance of society. Thus, the blind or visually impaired individual is further handicapped by being excused from the usual developmental, educational, and vocational experiences and often being permitted to maintain unpleasant habits, poor posture, and a debilitating dependence. The fear occasioned in others by blindness is associated not only with the rejection of blind persons, but also often with a confining benevolence which cares for but also segregates them from sighted society.[2]

High school seniors were asked to rank five potential injuries with reference to severity of personal impact; four-fifths placed blindness in the first position.[3] Teachers and administrators selected the visually handicapped as the least preferred for teaching (except aggressive delinquents) from among eight categories of exceptional children. This appeared due to the fact that, as a group, the educators knew the least about the blind. Some special educators, however, tend to place the visually handicapped in a more favorable position than do educators in general. Knowledge about a group of handicapped individuals appears to relate to the type of attitude held.[4] Bateman investigated sighted children's perceptions of blind children and found that those who had actually known blind children appraised their abilities more positively than those who had not.[5] Such positive appraisal increased progressively from grades three through six with the number of blind children known, and urban children were found to be more positive in their appraisals than rural children.

Contact alone, however, may not improve sighted children's attitudes toward their blind peers, as was found in a study concerned with the acceptance of blind children by their sighted classmates in social, academic, and physical activities.[6] The blind children in the study all used braille and were integrated into regular classrooms for at least half of the school day. The sighted subjects responded to a sociometric questionnaire asking them to list classmates they would most want to interact with or to avoid. For example, the children were asked to list names of peers whom they would most want to invite to a party, like to play with, be glad if absent, choose last as a team member, and have help them with reading. Although both "stars" and "rejectees" were found among the blind, results indicated that blind youngsters tended to fall below the median on most items; that is, they were generally less accepted by their sighted peers. Blind children who were accepted tended to be personally congenial and free from annoying personality and behavior problems, while those rejected showed the opposite pattern. Interestingly, it was generally found that sighted children who listed the blind among their first three choices were themselves below the median in acceptance or were social isolates. The authors view the effects of acceptance by low-status sighted children on the social status of the blind as actually negative. They stress the importance of developing classroom programs in which blind children gain acceptance from all of their sighted peers.

Sighted individuals have been found to be naive, lacking in understanding, and overly pitying of blind individuals, but not as negative about their capabilities as the blind themselves believe them to be.[7] Blind children have been found to be most aware of their handicap in social situations where people discuss their blindness, express feelings of sympathy, or attempt to help them too much.[8] They also are aware of it when crossing streets and traveling. In a situation in which a blind person must ask a stranger for assistance, an emotional conflict can ensue. On the one hand, the kind-hearted guide must be thanked in line with social expectations; but on the other hand, the frustration such necessary dependence creates in the blind individual might lead to a desire to curse or beat down the guide with the cane.[9]

A number of false attitudes toward the blind and false attitudes adopted by the blind have been discussed by Cutsforth.[10] He denies that the blind child suffers from "a world of darkness" and claims the experiential world of those born totally blind consists of visual nothingness, as far as its nature can be ascertained. He also does not believe the blind suffer because they have a yearning for sight, unless social pressure creates this attitude. The fear of being watched may create an emotional strain on the blind child, and this fear may persist well into later life. Cutsforth

1. Schulz, 1975
2. Connor & Muldoon, 1973, p. 353
3. Gowman, 1957
4. Murphy, 1960
5. Bateman, 1967
6. Jones, Lavine, & Schell, 1972
7. Lukoff & Whiteman, 1961
8. Cutsforth, 1951
9. Sommers, 1944
10. Cutsforth, 1951

does not believe the blind have as normal a sexual development as sighted children, and he is critical of segregation of boys and girls in residential schools because normal sexual growth can only be fostered by normal social conditions.

The personality adjustment of blind and partially seeing individuals has been studied through questionnaires, experimental reactions to stress, behavioral inventories, projective methods, and interview techniques. In one study of the adjustment of three groups of children—blind children in a day school program, blind children in residential school programs, and comparable sighted children—it was found that no basic differences emerged among the three groups.[11] There were also no differences when the attitudes and levels of understanding of their parents were compared. Better adjustment was associated with *greater* visual disability, and the findings suggest that partially seeing children may actually have greater adjustment problems than do the blind. This may be because partially seeing children must learn to adjust to two worlds—one of the sightless and one of the sighted, while the blind face a single adjustment to a non-visual world. The confusion and frustration of the partially seeing may be related to a greater incidence of adjustment problems.

However, the authors caution acceptance of an inevitable relationship between visual handicap and maladjustment. The possibility that severe and prolonged visual impairment may lead to problems in adjustment emerged from one study with congenitally blind children.[12] The authors concluded from their results that "to be congenitally blind puts the child in the high risk category for personality problems."[13] The problems of the blind were found to be similar to those exhibited by normal sighted children, but somewhat more intense and troublesome. The authors describe a withdrawn, autistic-like behavior in some blind individuals that may reflect passive aggressiveness or an attempt to control others. They also observed a defiant and upsetting type of behavior that also seemed linked to a need to exert power or control. Verbalization of blind individuals was frequently found to reflect a negative self-concept.

Lowenfeld concludes that behavioral studies have provided increasing evidence that blindness—uncomplicated by other capacity or experiential problems—does not cause psychological or developmental disturbances.[14] However, as we saw with other exceptional learners, the chances for the occurrence of such disturbances are heightened by the effects of the child's blindness on environmental experience (particularly the mother–child relationship).

11. Cowen, Underberg, Verillo & Benham, 1961
12. McGuire & Meyers, 1971
13. Ibid., p. 139
14. Lowenfeld, 1971

The hearing-handicapped individual is often at a serious disadvantage when interacting with others.[15] A loss of 30 to 45 decibels makes conversation difficult without amplification. The child can communicate, however, by having sound amplified and by getting close to the speaker. This level of hearing loss appears to affect basic awareness and monitoring, rather than socialization. A loss of 45 to 65 decibels clearly affects social interaction. Even though amplification makes conversation possible, the child must give all sound equal attention, and thus often is limited to interacting with one person or a small group. There is a sense of detachment from others, and social relationships with those who have similar hearing problems may be preferred. When the hearing involves a 65 to 80 decibel loss, amplification is less satisfactory for maintaining social relationships. Reliance on visual and tactual senses becomes considerable. The child may suffer from a poor sense of identity and find relationships with similarly impaired individuals most satisfying. Profound hearing impairment is associated with a loss of 80 to 100 decibels. Here, amplification maintains intelligible speech and attention to loud environmental sounds. Visual and tactual senses become mandatory for functioning in the environment, and the difficult task of interacting with others may preclude relationships with any but the profoundly deaf.

Age of onset of deafness can have a marked effect on the ability to communicate and on social adjustment. If profound deafness occurs prenatally or before age two, the child may be extremely isolated and very dependent on visual and tactual senses. Serious problems in communication and identification can develop. If a child hears normally for the first two years of life, he or she has oral language advantages and manifests fewer detrimental psychological effects than the child who has never heard. The advantages are even greater if the child has hearing to age five or six. When hearing loss occurs during the school years, the child's language problems diminish, but friendships and identification with the majority group are difficult to maintain. Individuals who suffer hearing impairment during this period often become leaders in the deaf community. Once the individual reaches early adulthood, onset of hearing loss may not alter personality, but it may accentuate undesirable traits. In addition, social relations, including marital plans, educational goals, and vocational levels can be seriously disrupted.[16]

Several researchers have investigated the effects of hearing impairment on a child's social status in the regular classroom. In one study, children with hearing impairments were found to be chosen less often as playmates than children with any other type of handicap, except cerebral palsy.[17] This lack of acceptance was attributed to the degree of visibility

15. Myklebust, 1964
16. Ibid.
17. Force, 1956

of the disabling condition; evidently, the presence of a hearing aid reduced the child's social status in a group. However, in another study, children without hearing aids (who had the least visible handicap) were significantly less accepted than those with hearing aids.[18] None of the hearing-impaired children were as accepted as their normal-hearing classmates. It was postulated that in some situations a visible handicap may actually reduce awkwardness between handicapped and nonhandicapped children, because it limits the need to explain the disability and enables the nonhandicapped to know how to accommodate the other person's condition.[19] In either case, the presence of a hearing aid may not be as critical as the adequacy of communication between hearing and non-hearing children. Without such communication, many negative social interactions can and do occur.

In another study, young, hearing-impaired children enrolled in regular first- and second-grade classrooms had a higher degree of social acceptance than was reported in the earlier studies.[20] No significant difference was found between the level of peer status for the hearing-handicapped and normal-hearing groups, although children with severe-to-profound losses (full-time hearing-aid wearers) had the highest degree of social status. Children with severe to profound hearing losses were better accepted than those with mild to moderate losses, and in some instances were among the most popular children in their classrooms. All hearing-impaired subjects had been provided with special preschool services and had been enrolled with normal-hearing children in regular neighborhood nursery schools. The authors suggest that their subjects' younger age, preschool experience, or the differences in the regular classroom settings are among the possible reasons for the better acceptance of the hearing-handicapped subjects than was shown for such children in previous studies.

The adjustment of deaf adults was studied in New York state.[21] Deaf individuals were found capable of establishing effective personal contacts. Seventy-five percent of those interviewed claimed they had close friends, and a higher percentage reported being with others on a social basis at least once a week. Almost half reported having hearing as well as deaf friends; one-third of the deaf individuals interviewed, however, felt that hearing people had negative feelings toward them.

The identity of self depends on the knowledge that our own feelings and attitudes are similar to those of our peers. The inability of the deaf child to profit from the many subtleties of language regarding sex roles and interpersonal relationships may create serious problems in this area.[22] Deafness itself does not cause emotional problems or mental illness. If present from early childhood, however, it may create considerable stress and adversely affect personality development, as indicated by the fact that schizophrenia occurs in the deaf population almost two and one-half times as often as in the hearing population.[23] While it has been claimed that deaf individuals often exhibit paranoid-like thinking, there is no evidence that hospitalized psychotic individuals who are deaf display a preponderance of paranoid symptoms.[24]

In a review of investigations of the social maturity of deaf children, Myklebust concluded that they are some 10 percent less mature than hearing children.[25] This appears to be the result of the higher levels of social competence required with advancing years, and deaf children's difficulty in attaining self-help and self-direction skills needed to meet such levels of competence. According to Myklebust, deaf individuals may manifest 15 to 20 percent less social maturity than hearing individuals by age twenty-one.

Many of the social problems of physically handicapped children result from the impact of others' reactions to the handicap, the child's interpretation of this reaction, and conflicts that arise as a result of the child's aspiration level versus his or her actual capacity. Crippled children often exhibit a basic insecurity in social relationships.[26, 27] Such insecurity appears to result in defensive reactions of blame and hostility when these children are appraised or criticized. Frustration and dissatisfaction from the role of constant bystander, while classmates run ahead, move with ease, and surpass them with accomplishments, also contribute to crippled children's social insecurity.

Children with cerebral palsy may have a more negative body image than normal children because they view and experience their bodies primarily as "frustrating objects."[28] Differences have been found among children with athetoid and spastic types of cerebral palsy with respect to personality make up.[29] Children with the athetoid condition (involuntary motion of the hands, legs, and mouth) were seen as having no unusual fears, as being loving but quick to anger, outgoing, relatively unconcerned with their handicap, and oriented toward social participation. Children with spasticity (small rhythmic movements or uncontrolled shaking within certain muscle groups), on the other hand, were described as filled with many fears, limited in display of affection, slow to anger, withdrawn, markedly concerned with their handicap, and slow to make friends and engage in group activities. However, the problems that afflicted children have with parents, peers, and other individuals in their lives are probably of greater influence than is the type of cerebral palsy.[30]

18. Elser, 1959
19. Shears & Jensema, 1969
20. Kennedy & Bruininks, 1974
21. Baroff, 1969
22. McConnell, 1973
23. Altshuler, 1967
24. Altshuler & Baroff, 1969
25. Myklebust, 1964
26. Broida, Izard, & Cruickshank, 1950
27. Smoch & Cruickshank, 1952
28. Meerloo & Meerloo, 1950
29. Perkins, 1963
30. Haring, 1959

The negative effects of a handicapping condition on social experience is clearly seen in the case of the individual with epilepsy. The physical hazards associated with seizures may be of secondary importance to the emotional disturbances developing from mistreatment in the home, school, and community.[31] The main antisocial characteristics that many epileptics exhibit are irritability, temper outbursts, and aggressiveness, along with moodiness and emotional changeability. Such problems can result from deprivation and maltreatment.[32] Scientific understanding and control of epilepsy have probably proceeded at a faster rate than social understanding and acceptance.

The American Institute of Public Opinion surveyed adult attitudes toward epilepsy throughout the United States in 1949, 1954, 1959, and 1964.[33] When asked if they had knowledge of epilepsy, 92 to 95 percent of those sampled responded in the affirmative over the fifteen-year period. To the question, "Would you object to your child playing with epileptics?" 57 percent answered, "no" in 1948; 68 percent in 1954; 67 percent in 1959; and 77 percent in 1964. When asked if they thought epilepsy was a form of insanity, 59 percent said "no" in 1949; 68 percent in 1954; 74 percent in 1959; and 79 percent in 1964. The question, "Should epileptics be employed?" was answered, "yes" by 45 percent in 1949; 60 percent in 1954; 75 percent in 1959, and 82 percent in 1964. Thus, it appears the public is gradually becoming more knowledgeable about epilepsy. However, the trend of more accurate knowledge may not be matched by an increase in social acceptance and opportunity.

A study of 266 patients in the pediatric seizure clinic of a general hospital revealed that many children with epilepsy are terrified by the loss of control inherent in having seizures.[34] The relationship between loss of control and incontinence aggravates this fear. For patients who had auras (an advanced sensory warning), the situation was less threatening because they could often place themselves in a safe position before the seizure occurred. Patients whose seizures were sudden and unpredictable often attempted to exert excessive control over others. An excerpt from one case study clearly illustrates this reaction:

> J.M., an 11-year-old white female, had poorly controlled seizures. She was also very unpopular in school because of her "bossiness." She is always trying to run everything and the kids don't like her.[35]

Some children with real seizure problems were found to have simulated attacks in order to avoid threatening classroom environments:

> In one case a charming but mentally retarded girl (IQ 40) had been assigned to a class in which she could not possibly participate. In this situation she developed seizures which resulted in her being placed in the more protective atmosphere of the guidance counselor's office. In the other case, the patient was of normal intelligence but would terrify her peers and use the seizures to avoid the classroom situation.[36]

Chronic health problems may lead to both psychological and social difficulties for afflicted children. From three independent epidemiological surveys done in Britain and New York, it was concluded that children with such problems have an increased risk of behavior disorders and emotional disturbance.[37] Two of the studies suggest that, with the exception of delinquency among boys, chronically ill children are more often troublesome in school and socially isolated than healthy children. At both primary and secondary school levels, these children are more likely to be described by their teachers as having poor attitudes toward their work. About one child in ten will experience one or more chronic illnesses by age fifteen, and up to 30 percent of these children may be expected to develop secondary social and psychological problems. About half of these secondary problems can be attributed to the child's illness. A diminished self-concept is seen as basic to these problems. Because of the illness, the child begins to see himself or herself as a person of lower value and worth.

In addition to a chronic health problem itself, the child's reaction to hospitalization and surgery can also affect social adjustment. Fifty children with congenital heart disease, who were hospitalized for catheterization (a surgical procedure for the treatment of heart disease) at Children's Hospital Medical Center in Boston, were studied.[38] The subjects were subdivided into three age groups (four to six; six to twelve; twelve to sixteen), observed, and given psychological tests before, during, and after catheterization. Results showed that 93 percent of the youngest children, 71 percent of the middle group, and 43 percent of the oldest manifested negative behavioral and emotional reactions after catheterization. These included increased physical aggression (fighting, hitting, throwing); verbal aggression (arguing, yelling, name-calling); regression (reversion to baby talk, enuresis, desire to be carried); anxiety (nightmares, insomnia, jumpiness); and expression of sadness, anger, pessimism, and uncertainty.

Although long-term consequences were not investigated, the adverse responses were widespread for several weeks after the procedure. In several instances, school authorities complained to the parents about their children's misbehavior. Moreover, many parents and siblings reacted to

31. Livingston, 1966
32. Keating, 1961
33. Caveness & Merritt, 1965
34. Voeller & Rothenberg, 1973
35. Ibid., p. 395
36. Voeller & Rothenberg, 1973, pp. 395–396
37. Pless & Roghmann, 1971
38. Aisenberg, Wolff, Rosenthal, & Nadas, 1973

changes in the child's behavior with impatience and punishment. The single most important factor related to the post-hospital adjustment of children with chronic health conditions seems to be the parents' attitude:

> When the cardiac child returns home from the hospital after a long absence he feels that the parents have rejected him, and often he develops hostility toward the parents. Many parents do not prepare or help the child to adjust to his return home. They overprotect and overcontrol the child and often keep him from establishing favorable peer relationships. This separation from peers can cause the child to develop a fear of competition and of losing. The parents in some cases also use the threat of the possibility of a recurrence of a cardiac condition as a method of controlling aggressive behavior in the child.[39]

Here we see the effects of a capacity-based problem, the medical procedure necessary to attempt to ameliorate it, and the impact on the child's family combining to affect the child's functioning level in the area of sociality.

The physical appearance of some mentally retarded individuals serves as a cue to their retardation and provides a basis for stigmatization, discrimination, and rejection.[40, 41] Facial and head characteristics that have been identified as the basis for labeling a subject as retarded or as of questionable normalcy include the eyes, teeth, facial expression, and hair style. In one study, cosmetic alterations were shown to make retardates appear normal or less retarded without using medical, dental, or plastic surgical interventions.[42] Hair styling, wigs, eyeglass frames and/or sunglasses, and improvements in necklines (change of collar or lapels) and facial expressions were found to reduce stigmatizing facial and head characteristics. Normal middle-class adults rated photographs of the subjects before and after the cosmetic interventions. It was found that the cosmetic therapy significantly reduced noticeable deficits for non-Down's Syndrome and Down's Syndrome subjects. Because social success is highly dependent on first impressions, often determined by physical attractiveness, cosmetic intervention for mental retardates may hold promise for increasing social acceptance. In addition, since satisfaction with one's body is strongly related to self-esteem, improved physical appearance may contribute to development of a more positive self-concept.

Mildly retarded children may be relatively normal in appearance, thus creating the problem of people expecting them "to act their ages." Their mental ages, of course, are slightly lower than their chronological ages. Thus, their behavior may not match their appearance because they may have the cognitive capacity and social awareness of much younger children.

The social conduct of retarded children has indeed been shown to be closely related to their reasoning ability.[43] A retarded adolescent may therefore exhibit behavior that appears, at first glance, to be antisocial but which is often simply immature. Although the notion of "a child's mind in a grownup body" is a simplistic one and not always adequate to explain the retardate's behavior, it should be kept in mind, particularly as others begin to expect certain mature responses to social situations. At the same time, we must be careful not to perpetuate physical overprotection of retarded persons. They should be allowed to wear clothes appropriate to their chronological age level, to take emotional and physical risks, and generally to lead their lives as fully and normally as possible.

In order to be effective in social interaction, an individual must be sensitive to the requirements of the environment and responsive to appropriate ways of dealing with social demands. These are, of course, requisites for social competence for all of us, but there are a number of reasons why they become problematic for the retarded child. Because of maturational lag, the mentally retarded may be slower to incorporate values of right and wrong and to develop internal controls. As a result, they may frequently exhibit inappropriate or antisocial behavior. Increased incidence of speech disorders also impedes retarded children's social relationships and prevents them from obtaining reinforcement from others for their efforts in language.

Equally difficult for the mentally retarded are social relationships with normal peers. Normal children's attitudes toward the retarded are even less favorable than their attitudes toward other categories of exceptional children.[44, 45] Retarded children are often subject to rejection and ridicule by their peers in school, which carries over into their neighborhood. For example, retarded children attending special classes were found to be just as well known as other children on their block, but they were not played with as often.[46] Even in experimental situations in which normal children were given the opportunity to choose a partner for a game, retarded children were chosen significantly less often.[47] It is not clear how much of peer rejection depends on the retardate's being placed in special classes or being left in the regular grades.[48, 49] Retarded children may be seen by their peers as subject to a different standard of behavior if they are in special classes and therefore treated with special consideration. On

39. Love, 1970 40. Aloia, 1976 41. Shushan, 1974 42. Ibid.

43. Stephens, 1974
44. Jones, Gottfreid, & Owens, 1966
45. Willey & McCandless, 1973
46. Meyerowitz, 1967
47. Gottlieb & Davis, 1971
48. Goodman, Gottlieb & Harrison, 1972
49. Peterson, 1974

the other hand, retarded children in regular classes who are not formally labeled may not be as readily excused for low performance or immature behavior.

What about the social and emotional adjustment of mentally retarded children? Do they exhibit more disturbances in getting along with others than normal children do? Such disturbances have been reported as occurring with a higher incidence among the retarded than among the general population.[50] The retarded individual is subject to greater stresses, frustrations, and conflicts and consequently is liable to develop behavioral disorders. Although there is some question that the retarded child inevitably develops such a negative self-concept, it is clear that the stresses of daily living bear greater consequences for a person with fewer coping skills.[51]

Retarded children—particularly the mildly retarded—tend to be overrepresented in lower socioeconomic classes, and so have a great deal in common with disadvantaged children. This often means that they come from broken families or families in which parents, for a variety of reasons, are not always able to serve as good adult models. The retarded child thus has less of an opportunity to learn social skills and modes of social interaction than a child in a family where both adults are present and available. A personality structure peculiar to the socioculturally retarded child has been described. It is characterized by a lower self-concept and higher manifest anxiety, particularly in school situations.[52]

Many behavioral patterns of the retarded stem from reactions by parents and siblings who either may tend to overprotect such children, thus preventing them from realizing their potential, or to reject them in subtle, often unconscious ways, thus lowering their feelings of self-worth.[53, 54, 55]

Much has been written about the negative effects of placing retarded children in a regular classroom if they are rejected by the other children in the class. It has been suggested, however, that retarded children might actually prefer rejection in regular classes to segregation in a special class.[56] There is some wisdom in this view, since the mildly retarded child in particular is going to be expected to live and compete in a world filled with normal peers. After being integrated into regular classes, some mildly retarded children have been shown to behave more similarly to their nonretarded peers than to retarded children left in special classes.[57] In one study, mildly retarded children in inner-city schools were in fact rated *higher* on sociometric measures when integrated with nonretarded children in the same classrooms.[58] Retarded children have been found to be extremely concerned about the effect special-class placement has on their friendships.[59] One of the factors affecting whether or not a retarded child is placed in a special class may be whether or not he or she has been able to develop a friendship with someone in the regular class.[60]

The retarded child is further characterized by a motivation to interact with adults, a trait that actually depends more on past experience than on the fact of retardation. Research experiments on retarded children deprived of meaningful social contact, such as those in state hospitals or those from culturally deprived backgrounds, indicated that they were actually more interested in social contact with the adult experimenter than they were with the experimental task itself.[61, 62, 63] In fact, the presence of an attending adult often decreased the child's performance on a task. Normal children, whose needs for social attention have usually been met, are free to complete the task at hand, but the same may not be true for retarded children. Whereas the normal child views such situations as an opportunity to solve a task or learn new information, the retarded child's agenda is often different. He or she appears to use the task situation as an opportunity to meet needs for social attention and affection. Such a child may often see the classroom situation as social rather than cognitive, an important possibility for teachers to bear in mind.

Retarded children have also been found to look to adults to interpret reality for them.[64] Their own judgment or cognitive ability naturally tends to be somewhat unreliable, and they may therefore look to others for answers rather than trust their own judgment. In one study, retarded and normal children made similar predictions about the outcome of an event, but when an adult experimenter made a counter-suggestion, the retarded children more readily changed their initial predictions.[65] Retarded persons often defer to group pressure, even when they feel that their own perception of things may be correct.[66, 67] The retarded may be more willing to trust someone else since their own judgment may have let them down in the past. Many mildly retarded adults followed by Edgerton tended to rely heavily on another adult in their lives for support and social adaptation.[68] The adult "benefactor" was often a spouse, employer, or landlady. Very few of the retarded persons in Edgerton's study were in any way independent of their benefactor for assistance in their daily lives, although

50. Beier, 1964
51. Lawrence & Winschel, 1973
52. Tymchuk, 1972
53. Farber, 1968
54. Meyerowitz & Farber, 1966
55. Wolfensberger, 1967
56. Quay, 1963a
57. Gampel, Gottlieb, & Harrison, 1974
58. Bruininks, Rynders, & Gross, 1974
59. Jones, 1972, 1974
60. Mercer, 1971
61. Harter, 1967
62. Zigler, 1966
63. Zigler & Butterfield, 1968
64. Lawrence & Winschel, 1975
65. Carlson & MacMillan, 1970
66. Trippi, 1973
67. Zachofsky, Reardon, & O'Connor, 1974
68. Edgerton, 1967

many became less dependent on their benefactors as time went on and as they gained more experience in fending for themselves.[69]

This social motivation is complicated by the fact that retarded children are also wary of adults.[70] Their hesitancy arises from previous encounters in which adults may have reprimanded them or otherwise reacted unfavorably because of their failures or inadequacies. The paradox of wanting to interact and at the same time being hesitant to do so is one that may be overcome through initial acceptance and support.[71] The social conduct of severely retarded persons has been found to be less influenced by adults around them than by notions of what a favorite television star might do in a given situation.[72]

Multihandicapping conditions can increase a child's social problems beyond those imposed by visual handicaps, hearing impairments, physical disabilities, or mental retardation. When a child possesses two or more of these handicaps, a marked deficiency in social development often results. Capacity for effective social functioning decreases as the number of handicaps increases. In studies of mentally retarded individuals who had hearing *or* visual impairments, poor social relationships and generally maladaptive interpersonal behaviors, such as aggressiveness and antisocial tendencies, have been reported. One study compared a group of institutionalized retardates possessing both auditory *and* visual impairments with a matched control sample of retardates without sensory handicaps.[73] All subjects were rated by the ward staff on eighteen variables, including aggression, stereotyped behavior, disruption, running away, hyperactivity, and positive and negative peer and staff relationships. The major area in which multihandicapped subjects were rated significantly different from controls related to interpersonal contacts and responsiveness to others. Multihandicapped subjects were described as significantly less responsive to staff or to peers, even when contact was initiated by others. They were also often markedly withdrawn. Thus, multihandicapping conditions interfere greatly with the development of even basic social-response skills. A high priority in program planning for multihandicapped children should be efforts to develop responsiveness to others.

As we said before, whether or not a learning disability actually constitutes a capacity-based condition is debatable. But for purposes of our consideration of the social experiences of children with learning disabilities, we will include them in this section on capacity-based problems. As children with possible neurological impairment (that may later relate to the development of a learning disability) achieve mobility in early life and begin to move freely about the house, they may be into everything with a frequency and determination not seen in average toddlers. As their own worst enemies in a family where their disruptiveness, constant movement, and seeming belligerence is negatively reacted to by others, they may experience little success, receive little praise, and fail to develop a healthy and adequate self-concept. Rappaport speculates that over the years this interaction continues and becomes more vicious and futile from the child's point of view.[74] The child comes to expect the loser's role; as others are seen to succeed and receive the admiration and affection of adults, the child may lash out and attack the object, person, or situation considered responsible for witholding acceptance or affection from him or her. Such lashing out may be physical in the earlier years and eventually be expressed on a more verbal level and accompanied by tears. In the classroom, an arithmetic problem marked with a red-penciled "X" may precipitate an outburst of anger and a defiant claim that the answer was right and the teacher who corrected it wrong.

Another maladaptive behavior observed in some children with learning disabilities is referred to as "flight from challenge." This involves attempts by the child to avoid situations that hold a promise of failure. For example, such children may refuse to attempt a class assignment that they in fact cannot do, giving the excuse that it is much too easy and not worth their time. Some may demonstrate overcompensation in an effort to cover up their deep feelings of inadequacy. Rappaport gives the example of a boy who memorized all the Gilbert and Sullivan operettas and sang them in situations in which he could not compete successfully. Another boy, who lacked the physical skill for playing baseball, was able to recite the names and complete records of most major league players.

The child who continually feels threatened by demands he or she cannot handle may attempt to control and manipulate others. Exaggerated helplessness or imaginary physical complaints often bring parents and others running to cater to the child's every whim. Problem situations also can precipitate a power struggle in which the child stubbornly refuses to comply or even goes out of his or her way to do the exact opposite of what is expected.

These kinds of maladaptive behavior patterns are the result of the continuous and often subtle interaction between capacity and experience. The possible neurological impairment that underlies the problems of the child with a learning disability is not the direct determiner of such behavior patterns. Rather, it sets the stage for excessive failure and frustration and places the child at a distinct disadvantage in coping with the expectations of others.

69. Edgerton & Berovici, 1976
70. Zigler, 1966
71. MacMillan, 1971
72. Baran & Meyer, 1975
73. Hutton, Talkington, & Altman, 1973
74. Rappaport, 1964

Research suggests that parents, teachers, and peers alike often have negative perceptions of learning-disabled children.[75] Parents have described their learning-disabled children as clinging but unable to receive affection and as showing little control in both emotional and motoric expression. Mothers characterize their youngsters as showing less consideration for others and as having trouble listening and expressing themselves. Teachers have been found to view learning-disabled children as behaviorally less desirable in the classroom than nondisabled children. Results from teacher ratings of learning-disabled and control children suggest that teachers judge disabled children as less competent in following directions, comprehending class discussions, vocabulary, time concepts, and general coordination.[76] Teachers appear to rate them lower than their nondisabled peers on cooperation, paying attention, organizing themselves, coping with new situations, being socially acceptable, accepting responsibility, completing assignments, and being tactful. In one study, teachers were interviewed regarding their perceptions of learning-disabled and educable mentally retarded children.[77] Whereas teachers tend to view retarded children primarily as educational problems, they were found to view learning-disabled children as learning, behavioral, and personality problems.

When compared to nondisabled classmates of the same sex and race, learning-disabled children appear to be significantly less popular and significantly more rejected by their peers, especially if the learning-disabled are both female and white.[78] Peers of learning-disabled youngsters do not perceive them as hyperactive, but do view them as being worried and frightened, never appearing to have a good time, sad, not neat and clean, not very good looking, and as children to whom no one pays much attention.[78] There is some evidence that learning-disabled children are less able than their nonhandicapped peers to perceive subtle affective cues given by others. This insensitivity may be one factor underlying their interpersonal difficulties with parents, teachers, and peers.[80]

Observational analyses of classroom situations indicate that learning-disabled children's social life in the classroom differs from that of other children.[81, 82] They receive less attention from the teacher during nonacademic activities and receive more negative and less positive reinforcement from the teacher than do their nondisabled counterparts. They also seem to be more often ignored when they attempt to initiate social interaction with the teacher or peers. Thus, learning-disabled children appear likely to be rejected by or in conflict with parents, teachers, and peers.

75. Bryan & Bryan, 1975
76. Bryan & McGrady, 1972
77. Keogh, Tchir, & Windeguth-Behn, 1974
78. Bryan, 1974b
79. Bryan & Bryan, 1975
80. Ibid.
81. Bryan, 1974a
82. Bryan & Wheeler, 1972

Attitudes toward teacher, school, and academics have been studied with educationally handicapped (behavior-disordered and/or learning-disabled), mentally retarded, and nonhandicapped children.[83] Educationally handicapped children had normal intelligence but were identified as at least two years retarded in at least one academic subject area. Results indicated significant differences between nonhandicapped and educationally handicapped subjects in all three attitude areas, with educationally handicapped children expressing more negative attitudes. Mentally retarded children also had significantly less positive attitudes than normals toward school and academics.

Learning-disabled children's academic retardation can also contribute to a lower self-concept. In a study on reading achievement and self-concept, learning-disabled children with reading retardation were found to view themselves more negatively than did similar learning-disabled children with normal reading achievement; the greater the underachievement, the poorer the self-concept.[84] There was also a significant decrease in self-concept with increasing age and grade; older learning-disabled youngsters tended to view themselves more negatively than similar younger children. These results have been viewed as supporting the hypothesis that learning disabilities and low self-esteem interact in a circular manner. Emotional and behavioral problems commonly associated with learning disabilities may function as both the cause of learning problems and as the result of frustration from repeated failure. As the child encounters more experiences of failure in school, his or her self-concept declines and frustration increases, hindering academic achievement and resulting in even more failure. Because children's perception of their own adequacy is determined in part by the adequacy of their school performance, efforts should be made to remediate problems in self-concept as well as the learning problems themselves.

SUMMARY

Children handicapped by capacity-based problems often encounter negative experiences as they interact with others in the environment. Such experiences are the result of social reaction to their physical and behavioral uniqueness. In general, the more visible and extreme their uniqueness, the greater the likelihood of negative social experience. And in general, the more negative the social experience, the higher the probability that the child will develop disturbances in behavior and self-concept.

83. Guthery, 1971
84. Black, 1974

Viewed from a distance, adults would most likely perceive Kevin as being a cute, normal child since he does not exhibit overt, bizarre, autistic behavior. However, since he has a tendency to withdraw, adults may consider him shy or cold. This withdrawal is not seen when he interacts with other children in the preschool. He displays affectionate behavior such as headpatting and kissing. If the children perceive him as different, it is probably because he imitates their speech and is not as efficient in communicating as they are. Kevin usually uses physical communication with adults and children. If another child takes away a toy he is playing with, Kevin will grab the toy back rather than verbalize. Some days Kevin will smile at me and give me a kiss if I ask him to, but on other days he will turn away from me as if I didn't exist. He probably turns-off to adults more often than other children since his parents have had such a difficult time relating to him.

SOCIAL EXPERIENCE AS A CAUSE OF PERSISTENT AND TRANSIENT PROBLEMS

Some handicapping conditions primarily originate as a direct result of the negative effects of the child's range and nature of experience. More precisely, they are the result of the interaction between the child's capacity and experience. But while capacity may predispose the child to be more vulnerable, negative experience can, in and of itself, create a handicapping condition on a persistent or transient basis.

Behavior disorders, some severe emotional disturbances, and speech handicaps are persistent problems that can reflect poor parent-child relationships and reaction to stress and threat of failure. Some mild mental retardation is environment-specific and present on a transient basis, as are the problems of some disadvantaged children; that is, during the six-hour school day, disadvantaged and retarded children may come into existence as "exceptional" because of their difficulty in meeting the demands of the middle-class, academically oriented, American school. When the bell rings at the end of the school day, both types of children may shed their exceptionality as they re-enter neighborhoods and families where they are considered normal.

If children with behavior disorders are handicapped by disorganized and inflexible behavior in the environment at large, their problems substantially increase when we view them in the world of people. Of 133 boys and 39 girls of elementary-school age who were referred to a special education program because of behavior and learning problems, poor social relations was the primary reason for referral for 47 percent of the boys and

46 percent of the girls.[85] The problem of getting along with others has frequently been found to be central to the school difficulties of children with behavior disorders.[86, 87]

We can extend our discussion of the three types of children described in the last section to the area of sociality.[88] The conduct-problem child may be the "bully," relating to others through force and intimidation. Even though some measure of control and prestige over others may result, such a child may always operate on the fringe of the group. This type of a behavior disorder often reflects early environmental experience of rejection by others and a lack of close and meaningful relationships. The inadequacy–immaturity child may have few interests in common with other children. In addition, such a child may not go out of his or her way to make friends and engage in play activities. This reticence to become involved with others may occur because of the child's fearfulness and anxiety due to previous failures in social situations.

The personality-problem child may greatly fear competition, give and take, and unexpected adjustments involved in group interaction, and hence will avoid others at all costs. The child may find fantasy preferable to reality because of earlier negative social experiences. The psychotic, schizophrenic, or autistic child is likely to represent extremes in social maladjustment in relation to the inadequacy–immaturity and personality-problem child. From a review of analyses of spontaneous behavior of psychotic children, it has been found that in general such children are relatively inattentive to either adults or peers and that they engage in little constructive play.[89] Evidence is not conclusive as to whether or not autistic children selectively avoid eye-to-eye or eye-to-face contact. It does appear, however, that autistic children look less at all objects in the environment, including adults, than do their non-autistic counterparts. When they do look at adults, they do not exhibit the accompanying behavioral responses that indicate attention in normal children. In some cases, a capacity-based neurological factor may largely account for such behavior, although negative experience may compound the problem. Without continual efforts on the part of others in the environment to initiate contact and involvement, detachment and self-preoccupation usually increase in severity over time, as a result of isolation.

Various forms of social deviancy (including schizophrenia and autism) have been viewed as related to delayed acquisition of role-taking skills, that is, the ability to take the perspective of another person. Such deficiencies in role-taking and communication skills seriously interfere with development of social competence. Individuals who have developmental delays in the acquisition of these skills tend to misread social expectations, misinterpret other people's intentions, and act in ways disrespectful of others' rights.[90] In a study comparing the role-taking ability of 45 delinquent and 45 nondelinquent boys ages eleven to thirteen, a substantial portion of delinquent subjects demonstrated a marked developmental lag in the ability to successfully adopt roles or perspectives of others.[91] Differences between the two groups persisted despite controls for social class and intelligence. Institutionalized emotionally disturbed children also have been found to be significantly delayed in acquisition of role-taking and communication skills compared to their nonhandicapped age-mates.[92]

The child with a speech handicap is constantly frustrated in attempts to relate to other people and may react with either aggression or withdrawal to such frustration.[93] Attempts at reducing the anxiety aroused in social situations often include preoccupation with health problems and worries about a job or grades in school. In this way, such handicapped individuals may come to attribute their basic difficulties to problems in these areas, rather than to their speech defects.

Bloch and Goodstein surveyed and evaluated research literature on the personality and adjustment of children and adults with functional (nonorganic) speech problems of articulation, delayed speech, voice, and stuttering.[94] Also reviewed were studies on the personality and adjustment of parents of speech-disordered children. They note that researchers view functional disorders of articulation as a consequence of 1) inadequate speech models, 2) lack of stimulation and motivation for adequate speech, or 3) an underlying emotional disturbance. However, the specific mechanisms involved and criteria for evaluating the relative contribution of these three factors have not been clearly defined. There is some evidence that parents of articulation-disordered children tend to be less well adjusted and have poorer attitudes toward child rearing than parents of normal-speaking children. Parents' personality and adjustment may also be a factor in their children's degree of speech improvement; children who have positive family relationships and who are accepted by their parents generally profit more from speech therapy than do children who are rejected.[95]

Regarding delayed speech, some studies suggest that parental overprotectiveness may play a causal role. However, these same findings can be viewed as evidence that mothers of speech-delayed children become overprotective as a result of the child's retarded speech development.

There is little evidence that children who stutter have a particular

85. Woody, 1964
86. Bower, 1969
87. Rubin, Simson, & Betwee, 1966
88. Quay & Petersen, 1975
89. Hingtgen & Bryson, 1972
90. Chandler, Greenspan & Barenboim, 1974
91. Chandler, 1973
92. Chandler, et al., 1974
93. Van Riper & Irwin, 1958
94. Bloch & Goodstein, 1971
95. Bryant, 1971

personality pattern or are severely maladjusted. Although such children often display greater anxiety, oversensitivity, and shyness, it is not known whether these factors are a cause or consequence of stuttering. Personality maladjustment does not appear to be related to age or stuttering severity, but stutterers have been found to have high social standards with poor social skills.[96]

The majority of studies on parental adjustment report few differences between parents of stutterers and those of nonstutterers. In studies reporting differences, parents of stutterers have been found to set more unrealistic goals and standards for their children and to show more concern for the adequacy of their child's speech.[97] Other data obtained directly from the parents have also suggested that parents of stutterers are overprotective and controlling and have feelings of rejection toward their children. In one investigation, what children who stutter actually think about their parents' attitudes and behavior was studied.[98] Male stutterers, ages eleven to thirteen, viewed their parents as *less* controlling and hostile and *more* loving than did a group of nonstuttering boys of similar ages. The authors suggest that one explanation for these findings is the older age range of their subjects, compared to children studied in previous investigations. Changes may occur in parent–child relationships as the stuttering problem is lived with over the years.

Investigations have also been made of the attitudes of others toward speech-handicapped children. As a group, children with speech problems tend to be less well accepted by their peers than are children with normal speech.[99] However, in a study of the social status and perceived speaking competence of stuttering and nonstuttering boys in grades three and six, it was found that stuttering boys do not expect to be and *in fact are not* rated differently from their normal-speaking age-mates on social position.[100] They do, however, expect to be and actually are rated less favorably on speaking competence.

Speech clinicians' adjective descriptions of adult male stutterers and elementary school-age boy stutterers were compared and many of the same adjectives were listed for both men and boys, indicating a fairly well-established stereotype for a stutterer, regardless of age.[101] Most of these adjectives were judged as undesirable personality traits for males. Approximately 75 percent of the speech clinicians listed adjectives in the "nervous or fearful" category, and 64 percent listed adjectives related to "shy and insecure." It is interesting to note that only 31 percent of the clinicians listed adjectives that reflected "abnormalities in speech."

96. Prins, 1972
97. Bloch & Goodstein, 1971
98. Yairi & Williams, 1971
99. Woods & Carrow, 1959
100. Woods, 1974
101. Woods & Williams, 1971

The family life of the disadvantaged child in the inner city has been described by Eisenberg as marked by a level of mutual aid and cooperativeness not typically found in the middle-class home.[102] He views lower-class children as enjoying each others' company more freely and fully than may be the case with self-oriented, middle-class children. In addition, there is a diffuseness in the family situation which, according to Eisenberg, lessens the occurrence of sibling rivalry or competition for mother's or father's love. Others have recognized this lessened rivalry and the lack of strain accompanying competition, in addition to an ease in separating from parents, as positive features of the lower-class home.

However, there may be a number of negative family conditions in the homes of lower-class children. Such children are less likely to have two parents with whom they can identify and from whom they can derive a sense of security.[103] In teaching their children, lower-class mothers tend to use more negative criticism and coercive statements, while middle-class mothers give more praise and explanation.[104] In spite of the lower-class mother's good intentions, her teaching style may depress her child's motivation to engage in new tasks and therefore contribute to the child's slowness to learn in the classroom.[105]

Eisenberg points out that the inner-city child may have collective rather than individualistic values.[106] The family may be oriented toward making advances through social group forces, not individual activity. This may be due to the feeling that "the odds are stacked against you," and "if we are going to get anywhere, all of us have to do it at one time." The home and neighborhood of the lower-class child are seen as maintaining a different reward system than that of the school.[107] At home, physical prowess and physical aggression in the face of frustration are rewarded, as is physical work done well. In school, most rewards are not related to the physical realm but to conceptualization, verbal response to frustration, and intellectual work done well.

These observations by Eisenberg and others essentially refer to lower-class status, rather than unique cultural influence. However, such influences may contribute to problems for the child once he or she must function in the larger society and the school. Some evidence exists that cultural differences in parental reinforcement style can cause the child to become confused about the responsibility for outcomes of events. Inconsistent reinforcement for success and failure observed in some Mexican-American families may contribute to the child's belief that he or she has little control over events and that external factors—fate, luck, or other

102. Eisenberg, 1965–64
103. Crow, Murray, & Smythe, 1966
104. Hess & Shipman, 1968
105. Hess, 1970
106. Eisenberg, 1965–64
107. Goldberg, 1967

people—are responsible for what happens.[108] Regardless of cultural background, many disadvantaged children feel that they cannot affect or control their environments and futures.[109, 110] This belief in external control may be related to lower achievement motivation[111, 112] and school performance.[113]

Compared with urban white children, rural Mexican and urban Mexican-American children tend to be less competitive, less rivalrous, less assertive, and more submissive and conforming.[114] There is some suggestion that this greater compliance is related to cultural factors, such as emphasis on obedience to parental authority, punishment of assertiveness, and inconsistent reinforcement. Degree of urbanization may also be a factor; regardless of ethnic group, urban children are more assertive than rural youngsters.[115]

In a long-term study of Hawaii's disadvantaged, the Hawaiian family was found to be an organized socialization system based on interdependence, shared work, and benevolent authoritarianism on the part of the parents.[116] As a consequence of these features, Hawaiian youth learn to approach their elders with respect, make requests in a subtle and indirect manner, and handle authority by group cooperation or by avoidance rather than negotiation. Achievement becomes defined in terms of interdependence and increasing cooperative contributions to the family, rather than in terms of personal development and independence. Data compiled by the investigators indicate that these characteristics and values bring Hawaiian youth into conflict with the middle-class-oriented school and teacher. The conflicting culture-based behaviors and attitudes of Hawaiian pupils and teachers include achievement viewed as helping others versus personal accomplishments; working as a group versus doing individual work; and avoiding confrontation versus demanding direct negotiation. Other conflicts arise from Hawaiian students' reluctance to ask for help and their viewing verbal responding as "talking back" and as showing disrespect for elders.

A similar culture conflict can be seen in the case of the American Indian. The values relating to getting along with others brought to school by Pueblo Indian children may markedly contrast with the teacher's expectations. The culture from which the children come supports anonymity and submissiveness rather than individuality and aggression. They would rather follow along in traditional ways, maintaining the status quo and not engaging in competition or any steady quest for success.[117] Erikson has written about the exasperation of white teachers working with Indian children in government schools when, at the start of a footrace, the runners hesitate and ask why they should run when it is already certain who is going to win.[118] For some American Indian students, to be singled out in praise is a source of shame; to look directly into the eyes of another may be an act of rudeness.[119]

For economically disadvantaged and/or culturally different children, expectations in the home and neighborhood often conflict with those of the school. One result is that behaviors considered normal and appropriate in the home can mark the child as "exceptional" in the classroom. The disadvantaged child's home and neighborhood environment may consider him or her anything but handicapped, different, or exceptional. The child adapts to this environment and may be admired and respected for physical prowess, physical aggression in the face of frustration, and physical work well done. In this environment, he or she admittedly may have problems, but is not a perpetual loser. A few blocks away, however, is another environment called school. Here the child suddenly becomes a candidate for all sorts of labels and for placement into any number of categories such as culturally deprived, socially maladjusted, or mentally retarded. While in this environment, the disadvantaged child may get into serious problems with the teacher, fail to meet many of the school's expectations, and eventually be suspended or expelled. Once back in the neighborhood environment, he or she ceases to be an exceptional individual in terms of the criteria of the school.

Some children, particularly those from poverty areas, have been characterized as "six-hour retarded children." These children function within normal expectations at home and in the immediate neighborhood. Yet when they walk through the classroom door to begin participation in a six-hour daily school program, they are viewed as mentally retarded.

Another consequence of culture conflict is its potentially negative effect on the child's sense of identity and self-esteem. A report on the special problems of Plains Indian adolescents describes them as facing a dilemma in which they must find an identity somewhere between two worlds.[120] Plains Indian students who elect to follow the "white man's ways" are likely to see themselves, and to be seen by their people, as disloyal to the native heritage. But, to reject the knowledge of the dominant white culture is to reject most of the avenues to power and national decision making. The split between the ways of the Indian student's people and the ways of the school increases the normal adolescent problems of identity formation and leads to feelings of confusion and internal dissonance. Indian youth face

108. Kagan & Ender, 1975
109. Gruen, Korte, & Baum, 1974
110. Stephens & Delys, 1973
111. Bartel, 1971
112. Crandall, Katkovsky, & Crandall, 1965
113. Nowicki & Roundtree, 1971
114. Kagan & Ender, 1975
115. Kagan & Carlson, 1975
116. Gallimore, Boggs, & Jordan, 1974
117. Zintz, 1962
118. Erikson, 1963
119. Allen, 1973
120. Ibid.

the extra task of integrating two "selves," which have opposing conceptions of time, attitudes toward achievement, competition, and intrusiveness, and evaluations of altered states of consciousness. Moreover, there is some evidence that cultural change accompanied by a disintegration of the old ways and social and economic failure in the new may foster low self-esteem. Results from a study of two American Indian tribes indicated that although the tribes did not differ in socialization practices, mothers and children in the less acculturated tribe (Miccosukee) had significantly higher self-esteem than their more acculturated counterparts (Seminole).[121] The Miccosukees demonstrated a firmer commitment to tradition and a higher level of social integration. Unlike the Seminoles, they had rejected the Bureau of Indian Affairs jurisdiction, introduced Indian culture and bilingual education programs, and maintained the tribal religion. Miccosukee children, however, were still significantly lower on self-esteem compared to Anglo norms. Although Seminole mothers had more formal education than Miccosukee mothers, they also reported more mothers on welfare, lower incomes, fewer intact families, and greater experience of racial discrimination.

An economically disadvantaged background can interfere with the child's social and emotional well-being when in the classroom. Socioeconomic status is at least partially responsible for friendship choices,[122] and it has been found that both elementary and high school students tend to follow class lines in choosing friends.[123] Among younger children, rejection of peers appears linked to social-class discrimination.

In a review of studies on teacher ratings of pupil acceptability, it was concluded that school performance is a more consistent determiner of a favorable teacher rating than social class; but it is also "highly probable" that lower-class poor achievers are viewed more negatively than their middle-class counterparts.[124] With regard to self-concept, Miskimins and Baker found five studies suggesting that disadvantaged children have relatively negative self-images and seven indicating that these youngsters do not differ in self-esteem from their nondisadvantaged peers.[125] One investigation, in fact, found more positive self-perceptions for disadvantaged children than for advantaged children as a group.[126] The authors concluded that disadvantaged people as a group do not differ from the general population on self-esteem, but do differ on other aspects of self-concept, such as culture rejection (discrepancy between their aspired goals and the goals of the society at large) and interpersonal cautiousness.

121. Lefley, 1974
122. Warden, 1968
123. Neugarten, 1946
124. Goldberg, 1963
125. Miskimins & Baker, 1973
126. Soares & Soares, 1969

SUMMARY

Social experience can contribute markedly to the problems of exceptional learners. In some cases the exceptionality itself is the result of faulty learning and negative experience, although we must always consider the interaction of capacity and experience as fundamental. Children with behavior disorders have learned to deal with a threatening environment by varying degrees of coercion and withdrawal. The severely emotionally disturbed child often manifests extremes in this regard. Central to the problem of many of these children is an inability to understand social expectations and the intentions of other individuals. Children with speech problems are constantly frustrated in social relationships. Articulation problems may result from poor speech models, lack of motivation for adequate speech, or some basic emotional disturbance. Although children who stutter are found to be anxious, oversensitive and shy, they do not appear severely maladjusted. The role of faulty parent–child relationships in causing stuttering is unclear, but some evidence exists that parental pressure and perfectionism may be linked to the problem.

Economically disadvantaged children may enjoy a cooperativeness in their family relationships that is not typically found in the middle-class families. However, broken homes, frequent criticism, and a lack of encouragement to engage in new tasks may adversely affect them.

Cultural conflicts often complicate the adjustment of children from minority backgrounds in school. Values such as competition and assertiveness may not be a part of the child's home environment, and he or she may be torn between loyalties to differing sets of standards. This conflict may result in the child's development of a negative self-concept. Social experience can aggravate or enhance capacity-based problems and can cause adjustment problems on both a persistent and transient basis. Economically disadvantaged children, children from differing cultural backgrounds, children with behavior disorders, and the mildly retarded may be "six-hour" problems, with their difficulties specifically linked to time spent in school. Once back in their homes and neighborhoods, they may not be considered exceptional and may function most adequately with others around them.

To complete our discussion of sociality, we shall examine the relationships between the exceptional learners and their families.

THE EXCEPTIONAL LEARNER AND THE FAMILY

The anticipation an expectant mother and father share from the moment pregnancy is confirmed to the moment the newborn infant is seen for the

first time is often intense and filled with expectations of the child's physical beauty, potential, and future accomplishments. The father who shows up at the delivery room with a baseball bat and catcher's mitt or who notifies his alma mater of a pending admission seventeen years hence represents a somewhat amusing but most telling example of this.

If the much-anticipated child has a defect at birth or acquires a handicap during childhood or adolescence, these expectancies are cruelly shattered, and the parents are forced to deal with a reality for which they were in no way prepared. Ross has described the rewards of parenthood: establishing womanhood and manhood for the wife and husband, adding fulfillment to a marriage, and looking forward to events ranging from the child's first word or first birthday party to his or her later marriage and presentation of a first grandchild.[127] Such potential rewards become uncertain, limited, or totally impossible when the child is in some way defective or deficient. In addition, the milestones of the child's life become difficult to chart since reference to normal children's development may have little relevance or meaning. Instead of a happy future with a successful son or daughter in adult life, the parents must often face the prospect of the child's total dependence on them throughout their lives and on some other caretaker after their death. Parenthood always involves conflict and anxiety to some extent but with a handicapped child all the normal adjustment demands often become severe.

Sooner or later the parents of a handicapped child ask themselves "Why?" "Why did this happen to us?" "What did we do to deserve this?" "What really caused our child to be defective?" This search for a plausible explanation is often greatly complicated because actual causes for a number of handicapping conditions are unknown or still being debated. Without a clear-cut medical explanation for the child's problem, the parents may come to imagine all sorts of reasons why they had a defective child.[128] The reactions of parents who had children born blind have been studied.[129] For some, the child's blindness was considered a symbol of punishment or a visitation of divine disgrace. Others felt the problem had something to do with their negligence, resentment of pregnancy, an attempted abortion, or marital discord. Similar reactions including guilt over sexual practices, alcoholic intake, or use of drugs may be encountered with parents of any child born defective.

The result of such fantasies is often anxiety and guilt, powerfully aversive states that almost always lead to defensive behavior that serves to reduce them. The attitudes of parents of children born blind can be generalized to parents of many exceptional children. Before discussing these, we should not overlook the fact that in some cases a child is accorded acceptance and genuine love by parents who face the reality of the problem and do not suffer guilt and conflict because of it.

The author worked with a twelve-year-old boy born with a hydrocephalic condition that led to an enlarged head. Surgical intervention arrested the condition, and the boy was not mentally retarded, although he had a difficult childhood with a number of behavior and learning problems in school. His parents had treated him, however, very much like the parents of the boy described in Chapter 2 by Thomas, Chess, and Birch.[130] They recognized his problem at birth, realized there was nothing they could have done to prevent it, and calmly and directly set out to maximize the boy's range and nature of experience. They dealt good-humoredly with his ups and downs and were patient and consistent. The author has seldom met such mature and adequate parents of an exceptional child and was impressed with the solidarity of their marriage. While the boy was having some adjustment problems, there was every reason to believe he would eventually lead a normal life.

Not every exceptional learner is as fortunate. One defensive reaction of parents to their child's handicapping condition is to deny its existence and set unrealistic expectations. The author has met parents of autistic children who, with the introduction of the learning-disability category, claimed that their child was not autistic but only learning-disabled and that with some perceptual-motor training would be entirely normal. Needless to say, such parents are extremely vulnerable to quackery that promises to cure their children with expensive training and treatment approaches.

Another example of denial was seen by the author in the father of a sixteen-year-old boy with an IQ of 75. The boy was doing marginal work in school but encountered disaster with algebra and geometry and other college preparatory subjects. In the author's opinion, the boy was below average in intelligence and had little chance for success in college-level work. But the father insisted the boy was only lazy, drove him mercilessly to do homework, and punished him for poor grades. Under this strain, the young man became seriously depressed and attempted suicide. Only then did the father relent and make an effort to better understand his son and his potential. Years later, the author met the wife of the young man who reported that he had a good job as a technical assistant in a large corporation and was doing well.

Some parents go in the opposite direction and bend over backwards to overprotect and infantalize their handicapped children. Instead of helping such children learn to do as much as possible for themselves, the parents

127. Ross, 1975 128. Ibid. 129. Sommers, 1944

130. Thomas, Chess, & Birch, 1969

anticipate their needs and prevent them from growing up in as normal a manner as possible. The author worked with another sixteen-year-old boy who had developed a serious psychosis. He had been a withdrawn and isolated child with bizarre language and behavior. His mother sought professional help but never accepted recommendations of exposing him to as many normal activities as possible. Instead, she kept him home with her much of the time, went every place with him, drove him to and from high school, refused to let him have any contact with girls, and constantly lectured him about the evils of sex. As a result, by the time the author met him, the boy had dropped out of school and had become totally withdrawn, spending all of his time in bed at home. His mother had moved his bed into the front room so she could constantly watch him and prevent him from engaging in sexual activity. This tragic situation resulted in the young man being institutionalized with an extremely poor prognosis.

Another reaction of parents of exceptional children is disguised rejection, manifested by overconcern and a tendency to exaggerate the role of being good parents. A seven-year-old boy seen by the author had developed encopresis, or a lack of bowel control, and was extremely tense. This created serious problems at school and away from home. His mother conveyed to the author her deep concern for the problem and revealed how she bought him expensive toys almost every day, denied him nothing he asked for, and how she loved him more deeply than any of her other children. The truth of the matter was, however, that she loathed the boy, and it was only after these negative feelings were recognized and discussed that any progress was made with the boy's problem.

Finally, some parents may overtly reject the child and project the blame for the child's problem on others. The physician who delivered the baby caused the retardation by ineptness. The teacher does not know how to teach and that is the reason the child is a serious learning and behavior problem in school. Society at large is responsible for the problems encountered by the blind child because of its prejudice against blindness. The author worked with a six-year-old boy who had had measles encephalitis. This illness and the extremely high temperature associated with it had left him mildly retarded. His mother's reaction was similar to the mother in the previous example, but his father was much more open with his rejection. He criticized the boy's slowness in remembering things, scolded him for being clumsy and stupid, and spent as little time with his son as possible. In addition, he threatened to sue the hospital where the boy was treated and the doctors who cared for him, claiming that they had used inappropriate medication and that they could have prevented the retardation.

These reactions are attempts by parents to cope with the serious conflicts they face in accepting the reality that their child is not normal.

The parent–child relationship is reciprocal.[131] The child's uniqueness may affect the parents in a negative manner and their reactions in turn may affect the child negatively. For example, autistic children often resist being held or cuddled. Holding and cuddling on the mother's part represents "doing what comes naturally" and what she has seen friends and relatives do to express love to their children. But in her case, the results are negative. We can see how difficult it could become to feel like a good mother and continue to try to express love to a child who constantly rejects you. It has been suggested that it is useless to blame the child for his or her behavior, and it is useless to blame the mother for hers.[132] What is needed on the mother's part is not normal mothering such as holding and cuddling, but exceptional mothering, such as putting the baby down when he or she struggles and finding alternative ways of expressing love. With the deaf child, the handicap's effect on the parents and family and the continuous repercussions of these two factors may interfere with normal development.[133] Through vocal tone, volume, and other sound cues, the hearing child learns to define and recognize emotions and affective states such as anger, sarcasm, encouragement, tenderness, and love. Without the ability to hear, the child may become apprehensive about emotionality and fail to develop love and closeness in family relationships.

Rappaport has discussed how the stage can be set for a faulty mother–child interaction if the child lacks the sucking reflex at birth or is hypersensitive or hyperactive during the early years.[134] The feeding experience that normally promotes pride, love, and gratification on the mother's part can become an unpleasant and frustrating affair if the child cannot suck and alternately screams and falls asleep. Such a beginning can have a marked effect on how the mother handles the child on other occasions; in place of warmth and affection, she may develop a helpless or outrightly rejecting attitude toward the child.

Training in exceptional mothering and fathering may be extremely valuable for parents of all types of exceptional learners. Thomas, Chess, and Birch have described some practical implications of their findings regarding the interaction between temperament and experience and a child's chance of developing a behavior disorder later.[135] They provide some interesting speculations about exceptional mothering and the prevention of a negative parent–child relationship as early as possible. Early recognition of the child's temperamental characteristics and other capacity and environmental influences may help the parents gain a clearer understanding of the type of experience that is optimal for him or her. Suppose a given

131. Ross, 1975
132. Zaslow & Breger, 1969
133. Altshuler, 1974
134. Rappaport, 1966
135. Thomas, Chess, & Birch, 1969

child is identified as "difficult" by observation and study of his or her temperament in early life. Thomas, Chess, and Birch found that 70 percent of such children in their sample did indeed develop behavior disorders in later childhood.

Parental guidance in relation to this child can be directed toward three goals. First, the parents can be helped to understand that their child, like all children, is a unique individual with certain capacity-based traits and characteristics which they need to understand and with which they must live. Second, the parents can be helped to understand the importance of the child's nature of experience in the family. Patience, consistency, and acceptance become more relevant and meaningful recommendations when they are suggested in relation to type of child, rather than in the context of the global "good parent" role. Finally, this approach can deal simply and directly with the guilt that is often experienced when parents find themselves in conflict with a child who is difficult.

Maternal psychopathology traditionally has been the explanation for the early faulty experience of children who develop emotional and behavior problems in early life; that is, there are "good" mothers and "bad" mothers, and the implication has often been that difficult children are the direct result of bad mothering. The deep feelings of guilt and inadequacy often experienced by parents as a result of this supposition only complicates and makes more negative the parent–child interaction. Parents who are helped to realize that good mothering is much easier with "easy" children and far more difficult with "difficult" children may be spared much of this guilt and be freer to devote their energies to objectively understanding their child and providing the nature of experience in line with his or her temperamental uniqueness.

Ross concludes that efforts need to be made to help parents stop endlessly dwelling on such questions as "Why did this happen to us?" or "What caused our child's problem?"[136] They should ask more constructive questions, such as "Where are we now?" "Where do we go from here?" and "How do we get there?" In Chapter 4, we stressed the importance of early identification and early training efforts with parents of exceptional learners that would create a positive range and nature of family experience as soon as possible in the child's life. Such efforts have been recognized as increasingly important. Rather than concern ourselves with special education for the child during the school years—when the effects of negative early experience may already be firmly established—we must work to apply special education through exceptional parenting long before the child enters school.

136. Ross, 1975

As an outcome of the Project on Classification of Exceptional Children, a national study to review the problems and issues associated with labeling, a number of position papers were prepared.[137] One paper concerned the effects of labeling on parents and concluded with eleven suggestions for parents regarding their role and rights in dealing with the problems of their handicapped children.[138] These suggestions are as follows:

1. You are the primary helper and decision maker for your child. Insist you be treated as such. You have the *right* to know and understand your child's diagnosis and the reasons for making treatment and/or educational recommendations. Nothing should take place without consultation with you.
2. You must learn to work with the people who work with your child. You may encounter resistance when you try to become involved in the diagnostic and decision making process. Gentle persuasion rather than anger on your part will be more effective. Be confident and cool about your abilities and intuition. After all, you know your child better than anybody else ever could.
3. From among the many people you see about your child, try to find one with whom you have the best relationship to help you coordinate the various diagnoses and recommendations.
4. Keep records. As soon as you know your child has a problem, keep a notebook of names, addresses, phone numbers, dates of visits, persons present during visits and as much of what is said as you can recall. Record questions you ask and answers given. Record recommendations. Record phone calls in the same way. Make important requests by letter and keep a copy yourself. Without such documentation you may encounter much delay and duplication.
5. Be sure you understand the terminology used by professionals. Ask them to translate what is said into language you understand. Ask for examples. Do not leave until you understand what has been said well enough to explain it to others (e.g., the child's teacher).
6. Ask for copies of your child's records. You probably will not get them but ask anyway. Also ask for a tape recording of any "interpretive" conferences since it is difficult to remember what is said.
7. Read all you can about your child's problem but don't swallow whole what you read. Books, like people, often offer only one side of the story.

137. Hobbs, 1975

138. Gorham, C., Des Jardins, C., Page, R., Pettis, E., and Schreiber, B. Effects on parents. In Hobbs, N. (Ed.), *Issues in the classification of children*, vol. 2, pp. 184–186. San Francisco: Jossey-Bass, Inc., 1975. Reprinted by permission.

8. Talk freely and openly with others—professionals and other parents. Join a parent organization and get to know people who "have been through it already." You will get moral support and not feel so alone. Find out about services and programs and visit them before enrolling your child.
9. Keep in close touch with your child's teacher. Find out what's going on in the classroom and how, with the teacher's help, you can follow through at home. Share what you read with the teacher and ask for advice and suggestions. Try to get across the idea you are a team, working for the same goals. Make your child a part of the team, too, if possible.
10. Listen to your child. He is giving you *his* point of view and on that he is an expert.
11. Work hard at living the idea that being different is just fine—not bad. Your child will learn most from your example. Help him to think of problems as things that can be solved if people work at them together.

Parental activism has historically played a large part in gaining facilities and programs for exceptional learners. This is even more true today when the number of parent organizations for the handicapped have increased and parents are making themselves more visible and vocal on local, state, and federal levels. Parents are the closest advocates children have, and their actions will always play a large part in determining the extent of support and services available for them in the community.

SUMMARY

Faced with an admittedly difficult role, parents of handicapped children may accept the child and his problem, deny the existence of the problem, set unrealistic expectations, overprotect the child, project the blame for the problem onto others, or reject the child in varying degrees. The guilt, frustration, and feelings of failure associated with being the parent of a handicapped child produce stress that can be expressed in a variety of ways. Pity and overprotection are in many ways no better than outright rejection. The optimal social environment for children with capacity-based handicaps recognizes their strengths and weaknesses, attempts to understand and respect them as individuals, and offers them every possible opportunity for realizing their potentials. Such conditions might be cited as optimal for any nonhandicapped child as well. They are more difficult to achieve when the child's handicap impedes attainment of such valued social goals as independence and conformity.

The social environment plays a critical role in the lives of exceptional children. Problems stemming from capacity (blindness, deafness, crippling diseases, chronic ill health, learning disability, mental retardation) may be aggravated by faulty social experiences. Such experiences may actually produce handicapping conditions of a persistent nature (behavior disorders and severe emotional disturbance, speech handicaps) or produce them on a transient basis (disadvantagedness, mild mental retardation, some behavior disorders, some learning disabilities).

In this chapter, we have reviewed the problems of exceptional learners across the dimension of sociality. In the next chapter, we continue our psychosocial survey by examining these children along the dimension of intelligence.

INFLUENCE OF SOCIAL AND ENVIRONMENTAL INTERACTIONS ON SELF-CONCEPT OF HANDICAPPED STUDENTS

by
Faith Scofield and James O'Dell, Sr.
The University of Kansas

How important is it that a handicapped child receive positive feedback from his peers and adults? What impact does society play in the development of a child's self-concept? To what degree does the child's environment affect his self-image? Positive social and environmental influences are imperative to a child's well-being. How he perceives himself, his self-concept, is determined by what society indicates as important and by the nature of the contacts with his environment. This unit will provide information regarding the importance of social and environmental interaction on the handicapped child's self-concept.

Teacher Trainee Outcomes

The teacher trainee will be able to identify ways in which an exceptional learner's self concept is influenced by patterns of social and environmental interaction.

Instructor Information

Prerequisites:

The teacher trainee should have information regarding P.L. 94-142; should recognize social and environmental implications of labels and grouping; should know priorities that reflect policy decisions, and should be familiar with treatment modalities for exceptional learners.

Organization:

The basic content of this course is comprised of one reading. Time will be spent in small group discussions and in developing a representative statement regarding the importance of social and environmental influences on an exceptional learner's self-concept.

Content Overview:

The reading presents information on self concept, social and environmental influences.

The reading includes:

I. Concepts of influencing behavioral change
   - A. Development and modification of attitudinal characteristics.
   - B. Behaviors representative of self-concept.
   - C. Emotional characteristics of children with learning and behavior problems.
   - D. Implications for educational programs.

II. Humanistic behavioral approach
   - A. Humanistic behavioral view of exceptional learning and behavioral characteristics.
   - B. Environmental experiences.
   - C. Internal deviancy and disciplinary positions.
   - D. Educational practices and social class.

Suggestions for Teaching:

Two class sessions of approximately one hour each are necessary for completion of this unit. During the first session the instructor should discuss the social and environmental factors that influence self-concept. He will also need to discuss the implications of the least restrictive environment mandate on the exceptional learner and those within the schools. The teacher trainee will develop a list of social and environmental qualities important to the development of an exceptional learner's self-concept. The second session will allow for discussion of the Qualities List and for small group discussions to compile a representative statement on the class views regarding importance of social and environmental interactions on self-concept.

Suggestions for Evaluation:

Evaluation could consist of staff judgement on the quality of class participation and/or evaluation of performance on a short answer test composed of questions over the reading and class discussions.

INFLUENCE OF SOCIAL AND ENVIRONMENTAL INTERACTIONS ON SELF-CONCEPT OF HANDICAPPED STUDENTS

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Prospectus

All children are born helpless. They often knock things over and disorganize the environment around them. Some children are lucky. They have parents, brothers, sisters, grandparents, aunts, and uncles who know that babies and young children do such things, but still love them. Some children are fortunate enough to have friends and teachers in chool who love them and accept them for what they are.

The special child has an additional vulture talking and shouting into his microphone that is directly connected to his self-concept. It is difficult for the special child to ignore the broadcasts that society sends him with the message that "You're not O.K." To help compensate, the special child needs special nuturing and understanding.

It is hoped that the materials for this unit will give the teacher trainee some insight into the very simple concept of guarding, improving, and sweetening the special child's self-concept. There is no secret to good education for the special child. The teacher trainee will find that one must simply address himself to being positive in order to change the patterns of social and environmental interaction with the special child.

This competency may be fulfilled by implementing both of the following objectives:

Objective	Enabling Activities
1. The teacher trainee will develop a list of social and/or environmental qualities important in the development of an exceptional learner's self-concept.	1. Reading 1: Gardner. 2. Develop in class a list of qualities. 3. Class discussion.
2. The teacher trainee will discuss in small groups the implication of social and environmental interactions on an exceptional learner's self-concept.	1. Small group discussions. 2. Each group could compile a statement on how social/environmental factors influence the child's self-concept. 3. Have each group present its statement to the class. 4. Have the class discuss and compile a representative statement of the class views on importance of social/environmental influence on self-concept.

Reading:

Gardner, William I. *Learning and Behavior Characteristics of Exceptional Children and Youth—A Humanistic Behavioral Approach*. Boston: Allyn and Bacon, Inc., 1977, pp. 166-172, 402-407.

pathology to account for the difficulties. If not symptomatic, no assumptions would be made concerning *underlying* causative factors.

This exercise of labeling some learning and behavior problems as symptomatic and others as not symptomatic is confusing because it is done so infrequently on the basis of knowledge of etiology and rather frequently in the manner suggested by Kanfer and Saslow,* that behavior patterns viewed as symptoms are defined basically by their nuisance value to the child's social environment or to himself as a social being. These writers conclude that such symptoms are quite unreliable in predicting either the person's history or his response to various procedures designed to modify the symptom behaviors.

Kaufer and Saslow 1965

Learning problems frequently are not viewed as reflecting "internal disabilities" until the child's achievement discrepancy has reached a specific point such as two grade levels delayed. Until that discrepancy level has been reached, other types of variables such as poor instruction or lack of interest are implicated.

Restated, it appears that the practice of labeling some learning and behavior difficulties as symptoms involves the assumptions that there are two processes of behavior development and functioning in operation: (1) If learning and behavior difficulties become a social nuisance or meet some predetermined criteria of difference (e.g., two grade levels below expectation), such are labeled symptomatic and as resulting from factors of an internal-deviancy nature. (2) However, if learning and behavioral differences are not of such kind or magnitude to be deemed a nuisance, these are accepted as resulting from experience, learning, and the like. Further, if one wishes to modify these difficulties, this could be accomplished directly by influencing learning variables. Labeling some learning problems as reflecting "disabilities" and others merely as learning "difficulties" illustrates this two-process position.

Humanistic Behavioral View of Exceptional Learning and Behavior Characteristics

An orientation of separate processes for "normal" and "abnormal" behaviors is difficult to accept because there is no evidence that two different sets of factors account for "symptomatic" and "nonsymptomatic" behaviors. A possible alternative solution to the problem is contained in a simple but inclusive statement presented by Ullman and Krasner:*

Ullman and Krasner 1965

> Maladaptive behaviors are learned behaviors and the development and maintenance of a maladaptive behavior is no different from the development and maintenance of any other behavior. There is no discontinuity between desirable and undesirable modes of adjustment or between "healthy" or "sick" behavior. . . . Because there are no disease entities involved in the majority of subjects displaying maladaptive behavior, the designation of a behavior as pathological or not is dependent upon the individual's society . . . . Maladaptive behavior is behavior that is considered inappropriate by those key people in a person's life who control reinforcers. [p. 20]

Gardner, William I. Learning and Behavior Characteristics of Exceptional Children and Youth--A Humanistic Behavioral Approach. Boston: Allyn and Bacon, Inc., 1977, pp. 166-172; 402-407. Reproduced by permission.

No learning or behavior characteristic from this viewpoint is categorically or intrinsically symptomatic or abnormal. Behavior characteristics may be viewed as problematic or exceptional to the extent that these create difficulties for the person or for others; but the behavioral approach makes no assumption that a problematic characteristic is symptomatic of inferred internal psychic ability, trait, or intellect pathology. A child who is overly aggressive, nonattentive to classroom routine, learns poorly under visual stimulation conditions, and has difficulty forming friendships is viewed as exhibiting exceptional or problematic characteristics. These are viewed by the behavioral position, not as symptons of inferred psychic, perceptual, or ability deviations, but as characteristics acquired by a physical being in his numerous and complex interactions with a social environment.

The relationship between environmental events and unwanted behaviors may be unusual in that these same events for most other children do not result in similar disruptive or unusual learning and behavior characteristics. These characteristics represent the cumulative effect of "abnormal" learning experiences—that is, experiences which have strengthened and supported the wrong learning and behavior characteristics. *These peculiar learning experiences, resulting from peculiar types and arrangements of environmental events rather than from peculiar or abnormal internal characteristics, in most instances produce the exceptional learning and behavior patterns.* The child is what his peculiar combination of experiences have made him. As noted, a child's deficits have a spiraling effect. If certain skills or discriminations are not acquired, others which require these as prerequisites cannot be developed. Thus his learning and behavior inadequacies are intensified.

Similar Rules Account for Varying Characteristics

It is assumed that the rules underlying the development of contrasting behavior patterns (desirable vs. undesirable) are the same. All children's experiences differ and these account for differences in behavioral reactions (emotional, social, verbal, motor, and so on) to present specific situations. The same stimulation, a lesson presented by a teacher, for example, experienced by two children at the same time can evoke quite different reactions and can have quite different learning effects on each because both children are potentially quite different. One of the children may be fearful of adult females; the other child may be quite attentive to and affectionate toward female teachers. One may process visual stimulation effectively while another cannot. One may generally acquire new patterns

much more rapidly than another. Thus, even if different children were exposed to the same experience at the same time, the behavioral effects will usually be different as a result of physical (sensory, motor, neurological) and experiential history differences. The behavioral repertoires resulting from this history and characterizing a given child at any moment will influence the effect a given experience will have on the child.

Environmental Experiences May Be Abnormal

In light of this, no constructive purpose is served by viewing a child's excessive aggressive behavior, nor the child himself, as abnormal. His behavior merely represents patterns which the social environment has created. The environments in which the behavior patterns developed have provided abnormal or inappropriate experiences for the child—experiences which have resulted in the undesired learning and behavior characteristics. These characteristics frequently represent the normal outcome of the effects of an abnormal environment. If a child is provided auditory stimulation in the classroom which assumes prerequistie auditory discrimination and auditory memory skills which he does not have, he may not learn what the teacher expects of him. The learning difficulties reflect a mismatch between the child's characteristics and the instructional program. If a child is exposed to frequent and intense abusive outbursts from an ill-tempered adult, he will develop intense and pervasive emotional reactions. *The child is not abnormal. The negative emotionality is not abnormal. It merely reflects normal results of abnormal experiences. The learning principles which account for his acquiring the pervasive negative affect are not abnormal. The environmental experiences to which the child has been exposed, however, do represent the abnormal variable in the development of the undesired behavior.*

The major implication of this viewpoint is both obvious and of considerable significance. Efforts to understand or to change the undesired learning or behavior patterns should focus on the abnormal experiences instead of on any assumed abnormality residing in the child or on a search for unique principles of learning to account for the behavior.

An example of this approach is provided by a report by Wiesen and Watson:*

Wiesen and Watson 1967

> *They report on the behavior change procedure used with a boy who exhibited excessive attention-getting behavior. This behavior, directed toward adult attendants in a residential living unit, was described as "almost unbearable" and consisted of constant grabbing, pulling, hitting, untying shoelaces, and the like. Unlike a psychodynamic model which would view the behaviors, for example, as symptoms of an inferred emotional disturbance or of an excessive need for attention and affection, the behaviors were hypothesized as being maintained by the adult attention which such behaviors*

> *brought. It was hypothesized that the excessive high rate (over six responses per minute during the baseline or pretreatment observations) was being maintained by "an inadvertently established partial reinforcement schedule carried out unwittingly by harried attendant counselors who periodically reinforced Paul with prolonged attention" (p. 50).*
>
> *This hypothesis was translated into a behavior management program designed both for the elimination of the bothersome behaviors and for the development of more appropriate means of interacting socially with both adults and peers.*

As a second example:

> *An adolescent described as mildly retarded in a work-study program interrupts her task assignment by frequent trips to the counselor's office to seek assurance that her completed items are satisfactory. Whenever the supervisor attempts to ignore or to reprimand her quest for assurance, Mary becomes sullen and will not return to her work table for a period of time. It could be said that Mary is emotionally disturbed, over-dependent, negativistic, has a high need for attention, or has poor achievement motivation and, further, that the excessive assurance-seeking behavior is merely a surface symptom of any one or a combination of these hypothetical conditions.*

The humanistic learning approach, in contrast, may view the excessive trips to the counselor's office as the end result of a complex set of previous experiences which provided various present environmental events with certain influence over the adolescent's behavior. An examination of the environment in which this behavior occurred may reveal that the work environment was aversive and the work stoppages were strengthened as this behavior removed her temporarily from the aversiveness of the work environment. It may also be true that the counselor provided her with a type of social experience which she found enjoyable (reinforcing). A complete historical and contemporary understanding of the behavior could require such data as (1) a designation of the manner in which the work environment acquired aversive properties, (2) a description of the manner in which the person developed the behavior pattern of leaving the work bench to obtain supervisor approval, (3) the types of responses which the counselor made to the adolescent, and the like.

Viewpoint 21 The views followed in accounting for exceptional learning and behavior characteristics influence the experiences provided a child.

The views held by psychoeducational personnel in accounting for exceptional learning and behavior characteristics greatly influence the educational or therapeutic objectives set and experiences provided. Hewett* has noted: "The pinning of a given label on a child with a behavior

Hewett 1972

disorder *carries with it a bias with respect* to causal factors considered crucial and explanations of why the behavior is occurring in the classroom. *These biases have also determined the nature of educational programs provided for these children*" (p. 392) (italics mine).

The Internal Deviancy and Disciplinary Positions

If a child's deviancy is viewed as a sympton or manifestation of something beyond his control—some internal disorder, disturbance, or pathology—it is likely that an attempt will be made to provide a restorative, treatment, or therapeutic experience aimed at changing the presumed disruptive internal factors. Others who follow a contrasting *disciplinary model* may attribute the child's behavior to such internal factors as poor motivation, lack of interest, laziness, or hostility, and the child is likely to be viewed as irresponsible and as intentionally engaging in inappropriate behavior. In this latter instance, the "educational" approach would border on the following: "He is ungrateful; he will just have to suffer the consequences of his inappropriate behavior." Not unusually, he is punished, dismissed, or otherwise treated in a punitive manner.

As more concrete examples of the relationship between assumptions held concerning personal accountability and resulting child management practices, a child labeled as "minimally brain damaged" or as "emotionally disturbed" may have difficulty focusing attention on a task and in maintaining task-oriented behavior. He further may engage in emotional outbursts toward the teacher when required to complete a difficult assignment. The teacher, assuming that the behavior is caused by factors beyond the child's control—the "minimal brain damage" or the "emotional disturbance"—either may tolerate the behavior as being an inevitable symptom of the internal pathology or may attempt to deal with it in some supportive manner.

Another child, not so diagnosed, may engage in the precise same behaviors and may be sent to the principal's office or otherwise punished and labeled a disturbing influence and as a disciplinary management problem. In this case, the teacher may view the behavior as resulting from "hostility," "meanness," "poor attitude," or some other personal characteristics of the child over which it is assumed he should have control. It is implied, if not stated, that the child could do better if he wanted to.

As a result of these different views of causality, different educational management and modification procedures are used. One child is held accountable for his inadequate behavior and either punished or talked to in a stern manner in an effort to get him to exercise more control over his behavior. The other child is not held accountable due to a different view of causality held by the teacher and thus is treated in a distinctly different manner.

Groups of children labeled in the school setting as "socially maladjusted or delinquent" frequently are viewed in a disciplinary "accountability" manner and distinguished from those labeled as "emotionally disturbed." It is implied that the socially maladjusted and the delinquent behave as they do because they choose to do so. The term "socialized delinquency" has been devised to emphasize this assumption.* Such children are viewed as having rational or volitional control over their behavior and therefore as choosing to behave in a socially inappropriate manner.

Quay, Morse, and Cutter 1966; Quay and Quay 1965; Quay 1969

In contrast, the emotionally disturbed child or youth is viewed as having minimal or insufficient personal control over his behavior. Something within him is sick, deviant, ill, pathological, weak, or inadequate and, thus, it is assumed he cannot help what he is doing. He has little or no rational control; he has no choice; he does not decide to behave inappropriately. Some "inside force" is assumed to be the culprit and thus the source of the difficulty. Such concepts as "poor ego control" or "limited impulse control" are used to account for his behavior. Again, the labels and related concepts of causation influence the manner in which the child so labeled is treated.

Educational Practices and Social Class

As illustration of more subtle influences which views of causation exert on the manner in which a child is treated, let us look briefly at the relationship between diagnostic and related educational practices and social class.

McDermott et al.* report that the poorest prognosis and least favorable diagnoses are provided children from lower social class groups. These children typically are not referred for psychological or educational treatment. Children from the middle and upper social classes are provided more favorable diagnoses and are frequently referred for special intervention services. White and Charry* report similar practices: Psychological treatment services are provided upper class children but not lower class groups. Hollingshead and Redlich's* description of the differential treatment of two females with highly similar problem sexual behavior is most provocative in its vivid documentation of these differential treatment practices. A girl from an upper-class family was treated by a psychiatrist while the adolescent from the lower-class family was sent to a woman's reformatory.

McDermott et al. 1965

White and Charry 1966

Hollingshead and Redlich 1953

Jones* and Rivers et al.* have written pointedly about the discriminatory practices involving black children. Rivers et al. state: "Traditional ability tests, we believe, systematically lead to the assumption of improper and false labels to black children by which racist practices are spread throughout the educational lives of black children" (p. 214).

Jones 1972; Rivers et al. 1975

As a final example, Burke* studied the placement of black and white children and youth in classes for the "educable mentally handicapped" and those for children with "learning disabilities." In elementary through

Burke 1975

high-school levels, black children received more than their share of "educable mentally handicapped" placements while white children received more than their share of "learning disabilities" placements.

The Humanistic Behavioral Position of Accountability

The behavioral position differs from both the deviancy and the disciplinary positions concerning causality, responsibility, and subsequent behavior change endeavors. As noted, the behavioral approach assumes that the present behavior of any child is a reflection of his unique history of experiences as he interacts with a present complex social environment. The "emotionally disturbed" child is *no more or no less* free of his history than is the "socially inadequate" or "delinquent." Both behave as they do as a result of present environmental conditions which have gained meaning through the accumulated and differential effects of the history of these particular individuals. Cohen,* in commenting on teen-age delinquents, suggests: "My experience with troubled young people, both in and out of institutions, has convinced me that most of the youths who exhibit 'deviant' behaviors are neither evil nor sick . . . . The young people are simply incompetent to obtain their share of the good things of life through socially acceptable means" (p. 307).

Cohen 1973

Thus, rather than blaming adolescents for their misbehavior, the educational environment should be designed to insure that they will acquire those behavioral skills needed to function in a more acceptable and self-enhancing manner.

The behavior of the child labeled "emotionally disturbed" may be less obviously—rationally, visibly, apparently, observably—influenced by the past and the present social environment than may appear to be true of the child viewed as "socially maladjusted." *But in most cases this is only an illusion.* Both are influenced by the same general set of factors. Differences among children may be evident in the specific variables present or in the relative importance of any given variable, but there is no evidence that different principles or processes underlie and control varied behavior patterns. For example, the "emotionally disturbed" child may have more frequent and more intense emotional reactions which serve to disrupt or interfere with his being able to process adequately the critical variables involved in a choice or decision situation. His behavior may be more erratic, less predictable, and more variable in extremes of behavior expressed than is typical of most children. *But these behaviors differ only in degree, not in kind, from characteristics of other children.* And these reflect, just as does the "delinquent" behavior of a "socially inadequate" adolescent, the present impact of a learning history.

Thus, within the behavioral orientation, the present exceptional learning and behavior characteristics of "emotionally disturbed" and "socially maladjusted" children and youth are viewed as reflecting inappropriate learning experiences. Instead of treating the characteristics in a punitive manner or of shifting the blame to some ill-defined hypothetical internal factors, attempts would be made to rearrange the learning experiences for each child to assist him in developing those features which would be most beneficial to him. If the child fights with the teacher, for example, the behavioral approach would attempt to identify aspects of the present school experiences as these interact with the child's characteristics to produce the fighting behavior. It would be assumed that some aspects of the school experiences need modification as these are evoking and maintaining the wrong types of behavior. Such changes would potentially influence various types of child behaviors (positive attitudes, cooperation, coping skills, and so forth), which in turn would result in modification in the school experiences provided. As another example, if a child refuses to comply with teacher requests or will not complete his homework assignments, the behavioral approach would suggest that the teacher examine her assumptions about why such behaviors are occurring and her methods of dealing with the problems. To dismiss the child's difficulty with such statements as "he'll do it when he's ready for it or when it becomes important to him" or "he is just naughty" contributes nothing but confusion. A child should be taught that certain behaviors produce certain consequences. At the same time, the school experience must provide the child with behavioral alternatives arranged so that he does in fact have a choice between consequences that are valuable to him and those that are not to his benefit.

Viewpoint 22 As the same principles are viewed as underlying all of a child's learning and behavior characteristics, problems of differential diagnosis are minimized.

As a basis for presenting the behavioral position concerning "differential diagnosis," it is instructive to comment briefly on an assumption of the internal-deviancy model that some learning and behavior characteristics represent *real* problems and others do not. This is illustrated in the following statement by Woody:* "Teachers can identify real problem patterns" (p. 9).

Woody 1969

The implication of this position is that some observable problematic learning and behavior characteristics are real (reliable? valid?) signs or symptoms of presumed internal pathology or disability and others are not. The rules or guidelines by which the psychologist, teacher, parent, counselor, psychiatrist, social worker, or school administrator would separate the *real* problems from the *unreal* ones are not presented by Woody, nor by any other source which could be found.

A similar attempt to distinguish real problems is suggested by Bower* in his discussion of children in the school setting who present exceptional behavior patterns: "A major caution in the use of descriptive

Bower 1969

with the boy accompanying him. The boy initially assisted the teacher by carrying materials. Gradually, he entered into more direct and active interactions. The teacher remained close by to insure success for the boy.

The adults provided the boy with practice in general game skills, tricks, rituals, slang, and other behaviors which would facilitate the boy's effective interaction in a peer group.

Finally, the boy was taken to a park area separate from the school and sent into a group of children (strangers) while one of the adults remained at a distance. He was gradually encouraged to engage in longer and closer social interactions. These experiences formed the basis for other role-playing and modeling sessions to give the child additional reinforced practice at social interaction.

The results of these modeling procedures with guided participation were highly positive. The boy was able to interact with his peer group without undue fear or avoidance. These newly acquired behaviors were maintained and generalized to other settings. In a two-month follow-up:

> *In playground settings that differed markedly from the protected preschool setting, the boy was able to join ongoing play groups, initiate verbal contacts, and sustain effective social interactions, all with children who were complete strangers to him. Furthermore, the boy accomplished these tasks competently, unhesitatingly, with obvious pleasure, and with no adult intervention whatsoever. (p. 277)*

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Summary

Programs designed to reduce the strength of or eliminate avoidance behavior patterns should include: (1) Procedures for reducing the aversiveness of the events, activities, situations, or people which the child is avoiding. This emotional relearning may be accomplished in vivo, through the use of imagery, or through modeling procedures. (2) Procedures for increasing the positive reinforcement value of those aspects of the child's life which he is avoiding. (3) Procedures for teaching competency skills which will result in the child obtaining positive reinforcers in the previously avoided environment.

DEVELOPMENT AND MODIFICATION OF ATTITUDINAL CHARACTERISTICS

As the child gains experience in a variety of situations, various of his behaviors become interrelated into general patterns of behaviors called attitudes. McGinnies* has suggested: When a certain class of performances either increases or decreases in frequency as a result of having been selectively reinforced or punished, and when these performances have verbal and emotional components indicative of acceptance or rejection of some social object, we say that the individual has acquired an attitude. [p. 330]

McGinnies 1970

In this view, attitudes represent classes of behaviors that have become interrelated as a result of numerous positive or negative consequences which these behaviors have produced. As a child interacts with situations or types of situations with some common stimulus aspects, either directly or vicariously through observation of others, these situations begin to influence related emotional, verbal, and other overt behavioral reactions. The verbal responses to certain types of stimulus events may be covert (subvocal) or may be overt. In a sense, attitudes, or interrelated patterns of behaviors, represent a disposition to behave in a given manner in certain situations. A child with a strong negative attitude toward education, for example, has a high likelihood of displaying a variety of negative reactions toward education-related situations and activities. In contrast, a child described as displaying a strong positive attitude toward education is likely to engage in a wide range of appropriate verbal, emotional, and achievement-related behaviors.

Positive Attitudinal Behaviors

In illustration, a child attending an educational program gradually acquires an interrelated pattern of emotional, verbal, and other behavioral reactions to various aspects of the school environment. If the child's experiences are predominately positive, he develops a positive attitude toward school activities. That is, he eagerly attends school, participates in classroom activities, makes positive statements about the teacher, himself as a student, and the classroom and his school activities, completes school assignments, cooperates with the teacher, and interacts appropriately with his peers. These emotional, cognitive, and overt behavioral patterns are acquired gradually by the contingent positive reinforcement that has been associated with literally hundreds of different school experiences. In this manner, the child acquires a general disposition to respond to specific environment settings in a given manner as a result of his history of experiences. These environmental events come to control or influence the occurrence of the behaviors which comprise the attitude. These interrelated behavioral patterns are acquired and maintained by the effects which they produce.

Negative Attitudinal Behaviors

If the child's experiences with school have been predominately of a negative nature, as may be the case of the multihandicapped youngster, he

gradually acquires an interrelated group of negative emotional, cognitive, and overt behavioral reactions, that is, a negative attitude. Typically, negative attitudes appear to have a greater or more intense emotionality component than do positive attitudes.

The child with a negative attitude toward school may make negative verbal statements about school activities, become negatively emotionally aroused when discussing or when engaging in school activities, and may engage in a variety of behaviors that actively and consistently compete with desired school activities.

In educational programs designed to develop, facilitate, or modify attitudes in children and adolescents, the multidimensional nature of such behavior patterns must be recognized. Efforts to change one component, e.g., verbal, without concomitant efforts directed toward changing other components are not likely to produce satisfactory changes in the child's attitudinal patterns. Ideally, simultaneous efforts should be initiated to influence cognitive, emotional, and related overt behaviors. If it is deemed desirable to influence a child's negative attitude toward authority, for instance, educational experiences should be planned to modify the child's verbal behaviors toward authority and his emotional reactions toward authority, as well as his overt approach and avoidance responses to persons with authority characteristics. Attempts at change in the cognitive sphere, as is typical in counseling and insight therapy, may facilitate some positive change but will be relatively ineffective in comparison with efforts at modifying all three aspects of the attitudes.

SELF-CONCEPT BEHAVIORS

Attitudinal patterns directed toward aspects of oneself are defined as self-concept behaviors. These self-directed attitudes refer to the verbal labels used by a child to describe aspects of himself, i.e., his physical characteristics, his behavioral repertoires, and his learning characteristics, and to the positive and negative emotionality influenced by these labels. The self-concept features of the child and adolescent with exceptional learning and behavior characteristics are not unusually of a predominately negative nature. The child is described as "not liking himself," "doesn't believe that he could do it even if he tried," or "not thinking much of her capabilities." These verbal-emotional behavior patterns serve as conditioned and discriminative events to influence other of a child's behavior in numerous situations. If a child labels himself in relation to a task or social situation as "I'm dumb," or "I can't do that because I'm too slow," he is likely to avoid appropriate interaction with the situation.

EMOTIONAL CHARACTERISTICS OF CHILDREN WITH LEARNING AND BEHAVIOR PROBLEMS

In planning educational experiences for children and youth with learning and behavior difficulties, the following should be considered. Due to having experienced numerous failures in a wide range of academic and interpersonal situations, the child has limitations in the number of competency behavioral characteristics producing positive consequences which he can use. Additionally, numerous inappropriate behavioral characteristics have developed that create an excessive number of negative consequences. As a result, when comparing these children and youth with "normal" peers without a history of excessive failure, the following points should be kept in mind:

There are fewer aspects of the child's environment which produce positive emotional reactions. The child has had fewer experiences of being successful and reinforced with a range of tangible and social reinforcers. As a result less emotional learning involving positive feelings has occurred. There are fewer people, places, activities, and events that he likes, has fun with, approaches, or that make him feel good.

There are more aspects of the child's environment which produce negative emotionality. Many of these events are associated with the typical school routine. Being asked to participate in certain activities may be a cue for considerable emotional discomfort. He is more likely to be in a bad mood and to object to advances made by others to get him involved. He is more likely to experience generalized emotional states of anxiety and apprehension.

There is greater likelihood that the child will engage in intense and disorganizing episodes of negative emotionality. There is also increased likelihood that the child will engage in episodes of aggressive behaviors. This may reflect a natural frustration reaction to being placed in situations which produce extremely unpleasant emotions, and not being able to escape from it. The child may strike out verbally or physically in a blind or disorganized fashion. These behavioral reactions are more likely to occur among children and adolescents with learning and behavior difficulties since more aspects of their environment produce unpleasant emotionality from which the child is unable to escape or avoid.

The usual events which produce positive emotional responses in most children, or which are neutral, may in fact become cues for negative emotional reactions. The teacher's smile or a display of affection would be a positive reinforcer for most children and would result in positive feelings on the part of the child. Some studies of children with learning and

behavior difficulties suggest, however, that such social stimulation may have a negative effect on some children. Thus, the teacher who smiles at a child in expectation that such would be pleasing may be disappointed. For some children, such social behavior may be an aversive event which produces a negative emotional response of anxiety or apprehension. The smile, in this case, would produce avoidance behavior. The child would engage in those behaviors that would terminate and, if possible, avoid the teacher's smile. For other children, being in the presence of people may be a cue for apprehension; engaging in solitary activity may be more enjoyable. Being left at school by mother, a neutral event for most children, may produce intense anxiety and related panic behavior.

Minor sources of irritation or frustration may produce unusually strong emotional reactions. When confronted with a task which is difficult, the child may engage in a temper outburst or may become excessively negativistic. When confronted with conflict or other sources of frustration or dissappointment, he is more likely to overrespond. The child may be described as having a low frustration tolerance. Minor signs of rejection may produce a general inhibition of social interaction.

There are fewer positive self-referents depicting emotional reactions. The child is less likely to report such feelings as: "I like myself." "I feel good." "I'm happy." "I can do this." "I'm excited." "I'm pleased." Labels depicting adequacy and positive emotional states are seldom used by others to refer to children with developmental difficulties. Labels such as pretty, sweet, good, great, fast, strong, skillful, smart, and quick, which become conditioned events for positive emotional reactions for most children, fail to gain this influence with children who experience excessive failure in learning and social interaction situations. Positive self-referents which produce healthy emotional responses are typically absent.

There are more negative self-referents depicting emotional reactions. The child is likely to report such feelings as: "I don't like myself." "I hate myself." "I can't learn because I'm dumb." "I don't feel good." Labels which reflect inadequacy have been used excessively by others in their interaction with him. Such terms as slow, ugly, bad, stupid, poor, crippled, damaged, handicapped, dumb, and weak become part of the child's self-referents. These typically become conditioned cues for negative emotional reactions. The child may be described as having excessive "feelings of inadequacy," "feelings of inferiority," "poor attitude toward himself," or as reflecting poor self-concept behaviors. These negative self-referents and related negative emotional reactions arise out of literally hundreds of previous failure experiences. As suggested, these create difficulty since they serve as discriminative stimuli for avoidance behavior. If the child reports, "I can't do that," "I don't want to," "I'm ugly," "I'm dumb," in relation to many aspects of the school environment, he is highly unlikely to attempt interaction with the school environment.

There are more negative and fewer positive referents depicting emotional reactions toward others and things. The child is likely to report such feelings as: "I don't like that." "I hate you." "I'm afraid of that." These arise out of the multitude of aversive consequences which have become associated with academic and social activities.

The child may have a more limited range of emotional reactions or he may demonstrate difficulty in discriminating the appropriateness of various emotional reactions. He may laugh or cry at the wrong time, he may become sad or happy in response to inappropriate events, or he may express fear of events which represent no real danger to him. In other cases, a child may not have developed the usual emotional caution over potentially harmful events and therefore does not develop adaptive defensive behavior. He does not seem to be able to anticipate danger or aversive situations. These events are not conditioned events for negative emotional reactions.

IMPLICATIONS FOR EDUCATIONAL PROGRAMS

In view of the above described unusual emotional characteristics of many children and adolescents with exceptional learning and behavior difficulties, the educational experiences, whether in the regular classroom or in other special instructional environments, must be designed to influence these. If an "emotionally disturbed" child balks at engaging in an academic task, the teacher must not assume that the child is being willfully negativistic or stubborn. Aspects of the task situation may well control negative emotional reactions which underlie the avoidance behavior. If the "learning disabled" adolescent becomes excessively emotional when instructional demands are placed on him, *the educator must view both the academic deficits arising from the learning difficulties and the excessive emotionality as interrelated instructional problems.* Active program efforts directed toward improvement in academic skills and toward the development of more appropriate emotional behaviors will contribute to the child's competency.

Increase the Influence over Positive Emotional Behavior

Providing planned and systematic experiences in increasing the number, type, and strength of internal and external events resulting in positive emotionality and related positive self-referents should be a central

PUBLIC ATTITUDES, POLITICAL CLIMATE, SCHOOL POLICY: IMPACT ON TREATMENT OF EXCEPTIONAL CHILDREN

by
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The University of Kansas

Being a responsible employee of the public schools in America has always required an awareness of public attitudes, political climates, and the policies established by local boards of education. Never has it been more important than at the present time when changes in these three areas are occurring at an ever accelerating pace. To know that such legislation as P.L. 94-142 (the Education for All Handicapped Children Act) has had a great impact on the schools is not enough. One needs to know how the public has reacted to it and how schools are attempting to incorporate such mandates into the policies of their districts.

This unit's purpose is to give such insight to the teacher trainee: to enlighten him on public opinion, political climate, school policies, and the influence of these factors on the schooling of exceptional children.

Teacher Trainee Outcomes

Upon completion of this unit, teacher trainees should be able to understand some of the societal and political concerns regarding education and to perceive the inequalities of education that have existed for the special child over the years. An additional outcome would be that the teacher trainee have an enhanced capacity to deal constructively with the attitudes, policies, and treatments regarding the handicapped child.

Instructor Information

Prerequisites:

Because this unit deals with the background and consequences of the enactment of P.L. 94-142, it will be helpful for the instructor and teacher trainee to know the major requirements of the law (a summary of that law is provided in the Readings for this unit). Also, due to general questions which may arise, it might prove helpful if the instructor were familiar with opinion polls, such as the Gallup Poll coverage of public opinion regarding schooling (e.g., see *Phi Delta Kappan*, September, 1978, pp. 33-45). Any information the instructor has on financing school programs, curriculum trends, and other areas cited in the Gallup Poll could be useful. Further, the instructor should be conversant with the *Brown v. Board of Education* case and related literature to deal with questions which may arise concerning the relations of racial minorities to other minorities. Teacher trainee awareness of these areas would be beneficial in contributions to the class sessions.

Organization:

The unit is centered on a primary reading with written reaction-lists to be constructed by the teacher trainees. Discussions by the entire class comprise the means for exchange of information and opinions.

Content Overview:

The reading provides insight into the attitudes of the public at large, especially its more vocal segments, the political climate of recent times, and the difficulty of dissemination and translation of the public laws into acceptable school policies. Changes of public and professional opinion as to how the problems of

segregation/integration into the regular classroom should be handled are discussed in the reading in terms of pre- and post-1950.

Suggestions for Teaching:

This unit will require two one-hour class sessions. The instructor might find the lecture/discussion form most appropriate for these sessions. This would allow presentation and discussion of the materials from the readings.

Suggestions for Evaluation:

The judgement of the instructor as to the written projects and evaluation of the teacher trainee's participation in the class discussions should suffice to measure the skills and knowledge gained by the teacher trainee.

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Prospectus

This unit places the teacher at the crossroads in the history of the treatment of the special child. It asks teacher trainees how knowledgeable they are of public attitudes, political climate, educational policy and the treatment of exceptional learners before and after 1950, culminating in the 1970s with Public Law 94-142.

By studying the central issues and examining what the public has considered important, the teacher trainee will better understand some of the societal concerns regarding education and will thus be in a better position to see the types of inequality that existed for the special child previous to Public Law 94-142 and the special types of difficulties which the new law presents.

Often when we see a law enacted or an inequality corrected through legislation, we feel we can go on to something else. It is wise to alert the teacher trainee to the fact that enactment of federal legislation for the special child is only the first step in the right direction. The reading in this unit entitled, "Mainstreaming: Dilemmas, Opposition, Opportunities," devotes considerable attention to the difficulties of assuring that the spirit of the law is not lost in the process of institutional adaptation. Public Law 94-142 is a great event. But who is to predict its success in practice? *Brown v. Board of Education* was also a great event in the history of our culture, but there are those who would argue that now, more than twenty years later, the problems which the 1954 decision attacked are still very much with us. Will this be the fate of P.L. 94-142? We had better be asking ourselves, where are we now? And, where do we want to be twenty years from now?

This competency may be fulfilled by implementing the two following objectives.

Objectives	Enabling Activities
1. After briefly stating the dominant professional attitude toward least restrictive environments *before* 1950, the teacher trainee will then prepare a list of the main reasons or arguments put forth in support of this attitude; included in the list will be a mention of the people or groups that supported this attitude. The teacher trainee will then do the same for the dominant professional attitude toward least restrictive environments *after* 1950.	1. Reading 1: Sarason and Doris, pp. 355-373. 2. Class discussion of lists.
2. The teacher trainee will prepare a list of the most significant consequences, positive and negative, of attempts to incorporate into school practice the least restrictive environment intent of Public Law 94-142.	1. Reading 2: Sarason and Doris, pp. 373-392.

Reading:

Sarason, Seymour B. and John Doris. *Educational Handicap, Public Policy, and Social History*. New York: The Free Press, Macmillan Publishing Co., 1979, pp. 355-392.

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Mainstreaming: Dilemmas, Opposition, Opportunities

THE SPEED WITH which mainstreaming as a concept, value, and public policy has emerged in our society is little short of amazing. Indeed, the change has come about so fast and with such apparent general approbation as to raise a question about what people understand about mainstreaming and its implications for schools. Let us try to gain some historical perspective on this question in the hope of avoiding an oversimple stance to a very complicated set of issues. Because we may think mainstreaming is desirable is no excuse for assuming that institutional realities will accommodate our hopes. To confuse change with progress is to set the stage for disillusionment.

Mainstreaming before 1950

Imagine that it is anytime before 1950 and you are attending a convention of people who work in the field of mental retardation. Suppose that at the general meeting someone requests the floor and makes the following statement:

> This is the first time I have attended this kind of meeting and I am impressed and encouraged by what I have heard. Thank God there are people like you who are fighting for justice for mentally retarded people. For too long society has ignored the needs of these people. Our state institutions are, as many of you have said, overcrowded and understaffed: We call them training schools but for the most part they are custodial institutions, and pretty bad even at that. What really gave me a lift was to hear so many of you call for many more community facilities to reduce the need for institutionalization. For example, you favor more special classes in our schools, want to attract more and better people into special education, and in general upgrade training programs in colleges and universities. But one thought has been nagging at me: why do we have to segregate mentally retarded individuals in our schools? Why are we so ready to separate them from the mainstream? Why can't they be accommodated in the regular classroom? Are you in favor of separate but equal facilities in exactly the same way as we treat blacks? Does not this type of segregation affect the retarded person adversely, and does it not rob the normal student of a kind of knowledge and experience that will make the student a better moral person? I would like to go on record as opposed in principle to the segregation of mentally retarded children in our schools. Indeed, I move that we go on record as opposed to segregation anyplace.

Sarason, Seymour B. and John Doris. Educational Handicap, Public Policy, and Social History. 1979, pp. 355-392. Reprinted with permission of Macmillan. Copyright © 1979 by The Free Press, a Division of Macmillan Publishing Co., Inc.

The speaker would have been regarded at best as a misguided idealist of the bleeding heart variety, and at worst as a dangerous mentally disordered person, out of touch with social reality and the nature and needs of mentally retarded people. The speaker would have been met by a stony silence and the meeting would have moved on to more "realistic" considerations. It would be an egregious injustice to judge the response as a symptom of callousness, immorality, or narrow self-interest serving the status quo. The fact is that these were dedicated people sincerely trying to get society to be more responsive to what the advanced knowledge, research, and experience suggested about the nature and needs of mentally retarded people. Indeed, the people well understood societal prejudice because they devoted themselves to the welfare of mentally retarded people! Why would anyone "choose" to work with "them"?

Let us do some more imagining. One of the people at the meeting feels badly that no one bothered to respond to the speaker, and feels an obligation to seek the speaker out to explain why his recommendation was so misguided, however lofty the motivation. So, this person gets the speaker aside and says:

> You are an idealist and there is a part of me that accepts what you said about segregation, although in the case of mentally retarded people you are simplifying the complexity of the issues. But let's assume that everyone at this meeting agreed with you. How do you think the "outside world" would react?
>
> I'll tell you how they would react: either with the same stony silence you received at this meeting or with anger because we are telling them that their communities have been immoral, callous, and irresponsible. And how do you think the school people would respond? They don't even want the special classes they now have; so how do you think they would cotton to the idea of putting mentally retarded people into the regular classrooms? Put them into the mainstream? It would be unfair to say they would like them to drown, but it is not unfair to say they want them on isolated islands surrounded by an awful lot of water. Mainstream them? If we came out and said *that*, it would be used as evidence that *we* were mentally retarded.

Twenty-five years later, mainstreaming became public policy. Did opposition melt away? Was there an unprecendented attitudinal and moral change in our society? Were welcome signs erected by schools and communities? Or were we dealing with a variation of the 1954 Supreme Court desegregation decision: racial segregation in schools was unconstitutional but changing practice to accord with that decision turned out to be beset by a

host of obstacles, deliberate and otherwise. There were some naive people who greeted that decision with a sigh of relief: thank God the moral cancer was spotted and could now be excised—maybe not tomorrow or next year but certainly in a decade or so. We have learned otherwise. Deeply rooted attitudes, ingrained and reinforced by tradition, and institutional and social structure and practice, are not changed except over a long period of time (Sarason 1973). And mainstreaming is no exception.

Let us examine more clearly what contributed to this change in attitude and policy. The first set of facts represented a convergence of events and forces: the quick growth and power of a national parents' group; the Kennedy family's personal and political interest in mental retardation powered by the financial resources of the Kennedy Foundation; and exposés in the national media of degrading conditions in state institutions that made mental retardation a topic of public interest. But this change is not comprehensible unless one sees it in the context of an even more drastic social change accelerated by the Great Depression: the widespread acceptance of the idea of governmental responsibility for citizens rendered dependent or handicapped for reasons beyond their control (Sarason 1976).

Before the thirties, it was not seen as the federal government's responsibility to intervene in matters of education and health. There were a few handicapping conditions such as blindness for which there were modest programs, but they were the exceptions and not to be considered forerunners of an increased federal role. The philosophy of "that government is best that governs least" made it extremely difficult to sustain national attention on issues in education and health. At best, they could receive attention in the states but even the states were guided by the prevailing philosophy. It took a national economic calamity to start the process of philosophical change, so that today our prepotent response to a social problem is to think in terms of federal policy and programs.

At the time that mental retardation started to receive national attention and the pressures for a federal role began to mount, there were social forces, at first unrelated to policy issues about mental retardation, that later had the most influence on how these issues were to be transformed. We refer here to the civil rights movement, which came from the desire to eradicate racial discrimination but which soon spread far beyond these confines to include the rights of women, homosexuals, older people, members of the armed forces, children. What were their constitutional rights? What constituted their equality before the law, and how had tradition and practice come to rob them of their basic constitutional rights as citizens? On what constitutional grounds can mental patients be confined in a state hospital? What are the legal restrictions to the use of psychological tests as a basis for job promotion? What legal procedures must be observed before a child can be suspended or expelled from school?

One could ask scores of similar questions, all testifying to a resurgence of attention to individual liberties and rights. Put in another way, the law and therefore the courts became agents of social change. The most pervasive changes have been through judicial decisions essentially reinterpreting or enlarging the scope of laws and existing constitutional language. And many of these decisions were not greeted with anything like unanimous approval, involving as they did radical changes in institutional thinking and practice. And that is the point; although these court decisions were stimulated by "plaintiffs" seeking change, they were opposed by "defendants" who were by no means few in number if lacking in strength. To interpret a decision in favor of the plaintiff as a "victory" is understandable but one should never underestimate how long it can take for the spirit of victory to become appropriately manifest in practice.

When mental retardation first became a topic of public discussion, moral-humane rather than legal-constitutional matters were in the forefront. Mentally retarded people "deserved" as much attention and programmatic support as other groups with disabling conditions. In fact, advocates for the mentally retarded wanted no more, and certainly no less, than "separate but equal facilities." No one was calling for elimination of state training schools or special classes. However, it did not take long before the rationale behind the historic 1954 Supreme Court desegregation decision began to influence the thinking of advocates for the mentally retarded.

Central in that rationale was the argument that segregation has pernicious effects both on the segregant and the segregationist. The 1954 decision marked the first time that the Supreme Court had ruled the findings of social science research admissible as evidence, and the weight of that evidence was that segregation had adverse effects on white and black children (Fellman 1969). Generalizing from that rationale, it is not surprising that its judicial relevance to mentally retarded people began to be examined. As a consequence, the status of mentally retarded people became a focus of legal scholars.

Lawyers did not have to be sophisticated about mental retardation to see, study, and write about legal-constitutional issues long ignored by everyone. And once the forces behind the movement for more and better facilities started to go down the legal-constitutional road, their goals became more encompassing and radical—radical in that they found themselves at a familiar root: segregating mentally retarded people in schools or elsewhere was demeaning to all involved. Blatt and Kaplan's (1966) *Christmas in Purgatory*—a pictorial essay of scandalous institutional conditions that was given such a big play in the mass media and placed in the hands of every United States Congressman—told only what happened to those who were segregated. In his subsequent books (*Exodus from Pandemonium,* 1970; *Souls in Extremis,* 1975; *The Revolt of the Idiots;* 1976) Blatt rounded out the picture by telling us what happens to the segregators.

The literature on the impact of court decisions on mentally retarded people in schools, institutions, the community, and work is vast. It is also staggering in complexity of details and the niceties of legal argument to those unfamiliar with constitutional law and the workings of the judiciary. But to someone interested in history and social change it is a fascinating literature. We recommend to the reader *The Mentally Retarded Citizen and the Law* (1976) edited by Kindred, Cohen, Penrod, and Shaffer. This book discusses the major court decisions as well as suggests the major problem areas whose legal-constitutional status has yet to be clarified. Another important and instructive book is *The Right to Education* by Lippman and Goldberg (1973), describing the development and consequences of the landmark Pennsylvania court decision affirming the right of all handicapped children to an education. It is interesting that the authors, who participated in the litigation, saw the case as a variation of 1954 Supreme Court desegregation decision.

Opposition

We have given this very brief overview in order to make a point too easily overlooked: the change in societal attitude and social policy was spearheaded by a dedicated minority relying on political pressure and the courts; at every step of the way this minority encountered opposition, especially from those in schools, institutions, and state agencies who saw how drastic the proposed changes would be for them. This opposition, of course, is quite understandable. After all, few people look with relish at the necessity of redefining their roles, activities, and values. Those who opposed the proposed changes were not evil or unintelligent people. Far from it. They were people engaged in public service, carrying out their tasks in ways that their professional training as well as long-standing custom said was right and effective. To be told that their values were wrong, that they had been contributing to evil, and that they would have to accommodate to new procedures and practices, it is no wonder that opposition did not dissolve. It may have had an opposite effect.

Consider the structural-administrative relationship of the field of mental retardation to the field of education, beginning with colleges and universities. In our schools of education, mental retardation has always been "special" or "exceptional," in that whatever it was, it was pretty much by itself, away from the mainstream of "real" education. Faculty and students in mental retardation were rarely viewed with a sense of pride, as an indispensable part of a department or school of education. It is not by chance that in our private colleges and universities mental retardation was hardly represented, and most of the time was completely unrepresented. If it was represented in our state colleges and universities, it was less because it was

viewed as indispensable and more as a reaction to pressure or legislation for preparing the teachers to take positions in state institutions. Even then, the department of mental retardation or special education tended to be small and politically weak. If these departments were more tolerated than warmly embraced it bespoke of snobbishness reinforced by and reflecting societal attitudes.

The field of mental retardation was seen as an unrewarding one in which to work. The field had a "hopeless" quality and if people entered it, it was either because the could not make it in the mainstream of education, or they were misguided, or they were noble, self-sacrificing individuals.

But there was a more fundamental assumption that undergirded all of these perceptions and it was one that everyone accepted: to understand and educate mentally retarded students required theories and techniques different from those required for "normal" human beings. There is or should be one human psychology based on principles applicable to all people. Women are different from men, Republicans from Democrats, and Catholics from Protestants, but to conclude that these differences arise on the basis of psychological-developmental-social principles and processes unique to each of these groups is gratuitous and a massive misinterpretation of what we have learned about human behavior. Because people develop differently does not mean that their development was governed by different processes. Diversity in behavior among people does not require resorting to diversity in underlying principles.

In any event, the separation between special and "regular" education, a separation accepted by both, was based on the assumption that retarded individuals required special theories: they were different kinds of human beings. Therefore, people trained to understand and work with retarded children could not work with normal children, and vice versa. For all practical purposes, the could not talk with each other! They segregated themselves from each other, and the thought that perhaps they should be together in the mainstream was considered ludicrous. The opposition to mainstreaming children was long contained in the political-administrative-social structure of departments and schools of education in our colleges and universities.

When we look at the public schools we would have seen much the same set of relationships, except that special class teachers *and* their students were now isolated from the mainstream. It is only in recent years that the special classroom was physically as well-appointed and situated as the regular one. Not all schools had special classes, and some children were bused to a school which did have one. To the rest of the school faculty, the special class teacher was a second-class citizen, someone who was expected to be a good custodian rather than an effective educator. Students were placed in the special class "for life"; there was no expectation that they would be returned to the regular class. And it was by no means infrequent for children to be placed in

the special class because of their behavior rather than their academic inadequacy. Special classes were not numerous enough to accommodate all retarded children, and it should not be surprising that these classes were used selectively for purposes of behavioral control.

Aside from the special teacher, no one was concerned about what the children learned or at what rate, because they were not expected to learn very much and even that would take years. The school principal, who either by tradition or administrative regulations came from "regular" education, considered himself incompetent to advise the special class teacher and, not infrequently, the principal saw the special class either as an unasked for burden or a blemish on the school's image. In urban settings, there was a supervisor of special education who would visit the classroom occasionally. If the special class teachers felt alone and unwanted, they were feelings warranted by reality. It would be a gross mistake to see their situation in personal terms, or, better yet, to react to it in personal ways. *It was a situation pretty much viewed as "natural" by almost everyone, including the special class teacher who if she felt otherwise was careful not to articulate it. At best, the special class teacher would have been delighted to achieve separate but equal status.* Nor must we overlook the fact that what we have described had the sanction of the community.

The pressures for mainstreaming did not come from within educational institutions and that fact alone allows one to predict that these pressures would be resisted. It is not a case of the "good guys and the bad guys." Personalizing the polarities in such ways overlooks how both sides are reflecting tradition, history, *and* a fast-changing society. Institutional custom and practice are effective bulwarks to forces for change and this, we too easily forget, has both good and bad features. On the one hand, we do not want our institutions to change in response to every new fad or idea and, on the other hand, we do not want them blindly to preserve the status quo. In regard to mainstreaming, how one regards the oppositional stance of our schools and university training centers will depend on how one feels about mainstreaming. If one is for mainstreaming, then one will tend to view opposition as another instance of stone-age attitudes. If one is against mainstreaming, one will tend to view it as another misguided effort that will further dilute the quality of education of everyone.

The important point is that opposition to mainstreaming was predictable. To proceed as if that would not be the case is to deny the obvious about institutional custom and practice, especially when they have always been congruent with societal values and attitudes. What happens when societal attitudes begin to change, at least among segments effectively organized to bring about change, and that change, like mainstreaming, is generally seen as related to many other matters involving basic constitutional issues? As we indicated earlier, the legal and human issues emerging from segregation practices in regard to mentally retarded individuals can only be

understood in the context of an upswell of protest against discriminating practices in regard to many other groups.

What frequently happens is that legislation is passed and public sentiments are translated into public policies having the force of law. From that point on, institutional opposition must conform to the law's intent and requirements or suffer sanctions. This, of course, does not mean that by virtue of the law, long-standing attitudes and practices have been dissolved and reconstituted to willingly accept its new thrust. One has to expect that ways will be sought to circumvent the new intent or to implement it minimally. This was true in the case of discrimination against any minority. Passing laws is far easier than getting them implemented consistent with both their spirit and their letter. This says less about human capacity to be socially perverse than it does about the strength of institutionalized custom and practice. We are not dealing with opposition based on "personality" but on institutional custom, organization, and values.

For example, Andelman (1976) writing about the Massachusetts mainstreaming law (Chapter 766) which served as a model for the federal law 94-142 passed in 1975, says:

> Teachers are also concerned with the accountability factor in 766. The law stipulates that parents of a child with special needs must approve the educational program designed for the child before such a program is implemented. Once the parents approve and sign the plan, the local school committee is legally bound to its specifications and required to produce the educational outcomes specified for the child. Teachers believe that they will be held responsible for failing to produce in children certain desired educational outcomes, when in fact, it is the larger system of public education which has failed to provide adequate resources for such outcomes even to be approximated . . . .
>
> For almost a decade teachers in our state have been negotiating their wages, hours, and conditions of employment. Hundreds of local collective bargaining agreements (a number of them negotiated on a multi-year basis) have established the structure of the teachers' work day and the nature of working conditions as they pertain to instructional assignments, preparation time and responsibilities, access to professional development resources, in-service education, participation in curriculum development, and many other issues.
>
> Aware of the fact that there was bound to be some conflict between their present collective bargaining agreements and what the requirements of the new Chapter 766 might be, teachers hoped that regulations for the new law could be promulgated sometime during the school year of 1972-1973 so that the collective bargaining required for the 1974-1975 school year could take into account the shape and scope of the new mandate. However, regulations for Chapter 766 were not promulgated until the spring of 1974, and many of the provisions of those regulations did prove to be incompatible with many collective bargaining agreements.
>
> For example, Chapter 766 requires that meetings to plan special-needs programs for children are to be scheduled at the convenience of the child's parents. In

an industrial state like Massachusetts, where both parents usually work, this means that many such school meetings have to be held after the school day and sometimes in the evening or on weekends. The requirements of a new state mandate that certain things may have to take place after the normal work day of the teacher are incompatible with collective bargaining agreements which define the structure and nature of the teacher's work day. After two years of collective bargaining, the problem is still not resolved in many communities [pp. 20-21].

Let us become concrete. We give below most of a summary of the federal law. It was prepared by the Children's Defense Fund (1976), an agency which, as its name implies, seeks to protect and enlarge the rights and opportunities of children.

On November 29, 1975, the Education for All Handicapped Children Act (Public Law 94-142) was signed into law. This law builds upon, expands, and will eventually replace the Education of the Handicapped Act, including Part B which provides assistance to states, as amended by the Education Amendments of 1974 (Public Law 93-380). P.L. 94-142 will become fully effective on October 1, 1977 (Fiscal Year 1978).

Both laws are extremely important for children who are handicapped, or misclassified as handicapped by their school districts, and for parents of these children because the laws (1) require states to provide special education and related services to children with special needs, (2) provide financial assistance to states and local school districts to develop appropriate programs and services and (3) establish and protect substantive and procedural rights for children and their parents.

State Plan

To be eligible for money under EHA-B, a state must develop policies and procedures in a "state plan" to insure that the requirements of the law are carried out in every school district in the state (whether or not that school district actually receives EHA-B money). State plans must be available to the public for comment and then submitted for approval to the Federal Bureau of Education for the Handicapped (BEH) in the U.S. Office of Education. The state plan must demonstrate that the state has established and will enforce the following:

1) *Full Services Goal*—a goal of providing all handicapped children with "full educational opportunities"; at least 50% of the EHA-B funds must be given to children who are receiving *no* education at all (i.e., are not in school) and children who are severely handicapped. The plan must provide a timetable showing how services, personnel, equipment and other resources will be developed and assigned in order to reach "full services".
2) *Due Process Safeguards*—policies and procedures describing due process safeguards which parents/children can use to challenge decisions of state and local officials about how a child has been identified, evaluated or placed in a special education program.

   These safeguards must include:

   a. prior notice before a child is evaluated or placed in a special program;
   b. access to relevant school records;

   c. an opportunity to obtain an independent evaluation of the child's special needs;
   d. an impartial due process hearing to challenge any of the decisions described above; and
   e. the designation of a "surrogate parent" to use these safeguards for each child who is a ward of the state or whose parent or guardian is unknown or unavailable.
3) *Least Restrictive Alternative—local and state procedures to assure that handicapped children are educated with non-handicapped children to the extent possible. Separate schools, special classes or other removal of any handicapped child from the regular program are only allowed if and when the school district can show that the use of a regular educational environment accompanied by supplementary aids and services is not adequate to give the child what he/she needs* [emphasis in original].
4) *Non Discriminatory Testing and Evaluation*—procedures showing that tests and other materials or methods used to evaluate a child's special needs are neither racially nor culturally discriminatory. The procedures should also assure that whatever materials or methods are used, they are not administered to a child in a discriminatory manner.
5) *Confidentiality of Information about Handicapped Children*—procedures to guarantee that information gathered about a child in the process of identifying and evaluating children who may have special educational needs, is kept confidential. State procedures must conform to regulations, issued in the February 27, 1976 Federal Register by the Commissioner of Education, which include requirements that parents must be given the opportunity to see relevant school records before any hearing is held on a matter of identification, evaluation or placement of a special needs child. These regulations also apply to the requirements for confidentiality of information under the Education for All Handicapped Children Act.
1) *Full Service Goal*—"free appropriate public education" must be available to all handicapped children ages 3-18 by September 1, 1978 and to all handicapped children 3-21 by September 1, 1980 unless, with regard to 3-5 year olds and 18-21 year olds, "inconsistent" with state law. States must place a priority in the use of their funds under this Act on two groups of children: 1) handicapped children who are *not* receiving an education, and 2) handicapped children with the most severe handicaps, within each disability, who are receiving an inadequate education.
2) *Due Process Safeguards*—as of October 1, 1977 the policies and procedures describing due process safeguards available to parents and children in any matter concerning a child's identification, evaluation or placement in an educational program must include:
   a. prior notice to parents of any change in their child's program and written explanation in their primary language, of the procedures to be followed in effecting that change;
   b. access to relevant school records;
   c. an opportunity to obtain an independent evaluation of the child's special needs;.
   d. opportunity for an impartial due process hearing which must be conducted

by the SEA or local or intermediate school district, but in no case by an employee "involved in the education or care of the child." In any hearing, parents have the right to be accompanied by a lawyer or any individual with special knowledge of the problems of special needs children, the right to present evidence, to confront, compel and cross-examine witnesses, and to obtain a transcript of the hearing and a written decision by the hearing officer. Parents have the right to appeal the hearing decision to the SEA and, if they are still dissatisfied the SEA ruling in federal or state court;

e. the right of a child to remain in his/her current placement (or, if trying to gain initial admission to school, in the regular school program) until the due process proceedings are completed; and
f. the designation of a "surrogate parent" to use the procedures outlines above on behalf of children who are wards of the state or whose parents or guardians are unknown or unavailable.

3) *Least Restrictive Alternative*—handicapped children including children in public and private institutions, must be educated as much as possible with children who are not handicapped.
4) *Non-Discriminatory Testing and Evaluation*—the tests and procedures used to evaluate a child's special needs must be racially and culturally non-discriminatory in both the way they are selected and the way they are administered, must be in the primary language or mode of communication of the child, and no one test or procedure can be used as the sole determinant of a child's educational program.
5) *Individualized Educational Plans*—written individualized educational plans for each child evaluated as handicapped must be developed and annually reviewed by a child's parents, teacher, and a designee of the school district. The plan must include statements of the child's present levels of educational performance, short and long-term goals for the child's performance, the specific criteria to measure the child's progress. Each school district must maintain records of the individualized education plan for each child.
6) *Personnel Development*—comprehensive system to develop and train both general and special education teachers and administrative personnel to carry out requirements of this law must be developed by the state, and each local school district must show how it will use and put into effect the system of personnel development.
7) *Participation of Children in Private Schools*—free special education and related services must be provided for handicapped children in private elementary and secondary schools if the children are placed or referred to private schools by the SEA or local school districts to fulfill the requirements of this law. The SEA must assure that private schools which provide programs for handicapped children meet the standards which apply to state and local public schools, and that handicapped children served by private schools are accorded all the same rights they would have if served in public schools.

To the reader unfamiliar with how Congress passes a law we recommend Bailey's (1950) *Congress Makes a Law*. It conveys well how legislation emerges from a welter of forces, past and present, leading inevitably to compromise and ambiguity. Those of us not saddled with responsibility for

legislation underestimate the role of compromise, conflict, and competing values in shaping legislation. More recent and relevant to educational policy and implementation is Gallagher's (1975) brief but highly instructive article, "*Why the Government Breaks its Promises.*" Gallagher had an important post in the federal bureaucracy concerned with education and, as the title of the article suggests, he came away from that experience with a very realistic view of the inevitable gulf between the spirit and consequences of legislation.

> If a well-informed citizenry is the basis for a democratic society, we are in trouble. My own experience of three years in Washington convinces me that not one in a thousand citizens has even a rudimentary knowledge of how things get done in government. This section and the one following give a brief indication of some of the decision-making points in both the legislative and executive processes that determine the shape and magnitude of educational programs supported by the federal government.

Gallagher goes on to describe "The Rise and Fall of the National Institute of Education."

> The establishment of the National Institute of Education (NIE) in 1972 grew out of disappointment with the existing education research program within the U.S. Office of Education and a desire to set up an independent organization on the model of the National Institutes of Health. Some rhetoric to the effect that this institute would be a key to reform in American education was helpful in getting legislation establishing NIE through Congress.
>
> Two highly contradictory goals were presented at the same time: NIE would support major investigations into basic research on the learning characteristics of the child, and it would finance innovation programs testing major alternative educational strategies and procedures.
>
> Advertised as a big new $100 million-a-year education program, it actually turned out to have less than $20 million of new money, a sum inadequate for the ambitions or needs of American education. The rest were funds required merely to continue or complete already committed efforts.
>
> Three years ago, in testimony before the Select Sub-committee on Education in the House, I predicted a corrosive cycle of *overexpectation-underfunding-disillusion* for NIE unless limitations were squarely faced. One way to come to grips with reality is to examine the price tag for various educational products. Experience has given reasonable guidelines on what programs cost. With $20 million of new money, NIE could fund one major curriculum project, one experimental school, and some miscellaneous smaller projects. That is all. Obviously, legislators or budget examiners would be ill-advised to express quick disappointment that American education has not been reformed by NIE in one or two years' time.
>
> NIE found itself in another catch. The authorizing legislation provided that a National Council of Education Research be established as the policy-making board. But appointment to the board was made only through the White House, and this procedure was delayed until almost one year after the legislation was passed. The professional leadership of NIE was forced to choose between two courses, either of which was highly dangerous: they could embark on major new

directions clearly intended by the legislation and risk criticism for ignoring the intent of Congress that policy be determined by the National Council; or they could wait until the National Council was established and risk criticism for being unresponsive to the clear need to get started in innovative directions. The NIE leadership engaged in a little of each and was predictably criticized on both counts.

Two years after its initial funding the National Institute of Education lies in shambles, struggling against administrative mishaps and lack of money. The Senate Appropriations Committee report recently suggested that NIE disband. What now? Again, there are two courses, neither of which holds much promise. One is to fire the whole leadership cadre of NIE on the "personal devil" theory; the other is to reorganize NIE into some other slot in the HEW complex in hope that some benefit will be gained by changing the label on the door. Meanwhile, cries for reform in education persist.

In discussing Public Law 94-142 we must constantly bear in mind that we will be dealing with ambiguities, compromises, expectations, and history. Before taking up a few of the provisions of Public Law 94-142 we should warn the reader that this federal law is very complex, containing many provisions for priorities, time schedules, funding levels, diagnostic and testing practices, advocacy for children, parental role, etc. This law, superceding a previous federal law, went into effect in October 1977. In late 1976, the *federal* regulations, spelling out in detail the criteria by which the law would be administered, were published. Those regulations determine the confines and substance of required *state* plans and regulations which, in turn, determine the plans and regulations required of *local* districts. Congress passed a law, the executive interprets and administers it, and so down the line. At every step of the way one is dealing with interpretations of interpretations. At this time, it is obviously impossible to evaluate the law's consequences. Some states such as Connecticut, California, and Massachusetts already have legislation consistent with Public Law 94-142, but most do not.

In the discussion that follows we examine some of the possible implications of a few of its provisions on two grounds: the historical background; and discussions with teachers and administrators in local school districts as well as with staff of state departments of education from several states.

In digesting these discussions we could come to only three firm conclusions. First, there was unanimity that the law would have massive consequences for public education, although there was no unanimity on what these would be. Second, implementation of the law would require an equally massive increase in time, energy, and paperwork for everyone. Third, despite the funding provisions in the law, the long-range effect would be to require local school districts to increase their school budgets. Less firm than these three conclusions was the view that one has to nurture a healthy skepticism about the relationship between what school people say they will do and what they actually do.

What follows has to be regarded not as an effort at prediction or evaluation but as a kind of analysis seeking to determine how past historical trends interacting with emerging attitudes and practices in today's realities can give us a glimpse of the future. Acceptance of mainstreaming as a concept and value is a socially moral triumph, but just as we had no good reason to accept the Supreme Court's 1954 desegregation decisions as "solving" a problem, we have no reason to view Public Law 94-142 as a solution to other forms of educational segregation. Social pendulums swing from one pole to the other, in part because of our tendency to underestimate how deeply ingrained practices and habits of thinking manage to subvert our better intentions. If what follows cannot be characterized as sunshine and light, it is not because we are cynics but because we cannot let our hopes blind us to obstacles.

Legislation is often a strange mixture of inkblot and unambiguous statements about intent, consequences, time tables, payments, and punishments. Public Law 94-142 is no exception. Far from being a criticism of this law, our characterization is intended to suggest that there is sometimes wisdom in the ambiguities. For example, take the item concerned with *Personnel Development*. Why is personnel development necessary? If the aim of the law is to mainstream handicapped children, why is personnel development necessary for special and regular education teachers? If mainstreaming is an effort to eradicate discriminating segregation, should not the law be explicit about phasing out special class teachers and classrooms? And why does the law require so many procedures and controls in an effort to insure that the law's intent will be implemented? Have the schools been so lawless about the rights of handicapped children, so discriminating, or so unresponsive as to require all of these new procedures and controls?

One might come away from a reading of the law with the conclusion that schools have not been for handicapped children but against them. The fact is that the contents of the law only make sense if one assumes that the forces for the law understood quite well the opposition on the part of school personnel, and that school personnel would have to be "helped" to adjust to new conditions not of their making. Indeed, without federal money as an incentive and a few years as a kind of grace period, the implication seems to be that mainstreaming would be impossible to institutionalize.

Where the law is most clear the rationale is the most implicit. This is another way of saying that those who wrote the law knew well that a radical transformation of the schools was being called for and that it would encounter opposition for some time to come. Mainstreaming, like school desegregation, would take place with "deliberate speed," a phrase from the 1954 Supreme Court desegregation decision. That phrase in the decision was ambiguous and wisely so, although none of the Supreme Court justices expected that a quarter of a century after the decision, school desegregation would still be encountering mammoth obstacles. A reading of Public Law

94-142 suggests that although its writers may have been aware of the nature of the opposition, their time perspective was far more optimistic than those of the Supreme Court justices in 1954.

What we have just said assumes that the intent of the law was to end segregation practices. That this is an unwarranted assumption is clearly suggested by the item *Least Restrictive Alternative*. What this item boils down to is that when a school district can show that the use of a regular educational environment accompanied by supplementary aids and services is not adequate to give the child what he or she needs, educational segregation is permissible. Given the law's implicit recognition of the opposition to mainstreaming, one does not need to be a cynic to predict that school districts would find ways to justify the continuation of special classes. It would be a rejection of every theory of individual and institutional behavior if school districts did not seek ways to continue what they regard as right and proper. This is not because they wish to discriminate in the pejorative sense against handicapped people, but because the law and the schools agree that there will be many cases where mainstreaming is impossible. The law and the schools are not in opposition about principles. *What the law intends is that the number of segregated individuals should be reduced somewhat.* We should then amend our prediction in this way: The schools will seek to mainstream more handicapped people but the bulk of these people will continue to be segregated. Public Law 94-142 intends a modest quantitative change and, in that respect it is miles apart from the 1954 decision which ruled segregation unconstitutional.

The word "mainstreaming" never appeared in the federal legislation, lending support to the position of some people who were influential in developing 94-142, that the law is being misinterpreted by different individuals and groups. It is a position fully congruent with our observations that in practice the law is not being implemented in the spirit of "separate but equal facilities are inherently unequal." Indeed, many of our observations suggest that in many school districts economic-budgetary considerations are far more potent than anything else in determining whether a handicapped child is mainstreamed or not mainstreamed to any extent.

This is a point that Scull (1977) emphasizes in relation to the decarceration movement. It is precisely when economic-budgetary considerations become primary that one has to set drastic limits to the relationship between the spirit and the consequences of legislation like Public Law 94-42.

Equally distressing, professional rivalries among school psychologists, teachers, guidance counselors, and other educational specialists frequently appear to be having adverse effects on the formulation and implementation of a handicapped child's individualized educational program (IEP), a "program" mandated by the law but the contents and processes of which are vague. We know of instances where professionals participating in the formulation of a child's IEP have not made recommendations to mainstream a child because of conflict with the school district's policies, raising the thorny, ethical question: Who is the client?

From a narrow, legalistic standpoint, it may be inappropriate to view Public Law 94-142 as an attempt at mainstreaming. But it is clearly not inappropriate to say that the law never could have been written and passed except in a climate suffused with the mainstreaming considerations explicitly contained in the 1954 desegregation decision. If the law is being "misinterpreted" as mainstreaming legislation, it is due less to what the law actually says and more to a perception of some people that the law was a derivative of anti-segregation sentiment. Given our observations about how the law is being implemented, the silence of the law about mainstreaming, as well as its emphasis on due process and least restrictive alternative, suggests that the law's evasiveness about mainstreaming is setting the stage for future court battles about mainstreaming as a value and practice.

Gallagher (1972) regards the controversy about labeling as fruitless and makes the case that from the standpoint of influencing and developing public policy, "labelling is a standard first step in trying to provide needed services" (P. 529). History is on Gallagher's side. Gallagher then goes on to emphasize what he considers more important than labeling: How opposition to mainstreaming is based on long-standing attitudes, practices, and school structure.

> There is yet another problem that has been swept gently under the educational rug, but that community activists and parent groups have called to our attention again. It is that special educational placement is too often an exclusionary process masquerading as a remedial process. The regular educational program is only too happy to refer their most troublesome cases to special education. In too many instances general educators only ask one thing of the special educational program—that it take those troublesome children and not give them back.

The special educator has long held to a philosophy that he has been unable to implement in the educational system. A fine example of the theoretical position is presented by Reynolds (1971):

> Special education should be arranged so that the normal home, school, and community life is maintained whenever feasible. Special education placements, particularly those involving separation from normal school and home life, should be made only after careful study and for compelling reasons. [p. 425].
>
> The learning requirements of exceptional pupils, not only their etiological or medical classification, should determine the organization and administration of special education [p. 429].

These are sentiments that most educators could easily subscribe to, yet data collected informally by the Office of Education suggested that special education was de facto, a permanent placement. In a number of large city school systems far less than 10 percent of the children placed in special education classes are ever re-

turned to regular education. When one considers that the referral error could well be that high, it is easy to conclude that the bridge that should exist between special and regular education is, in fact, not really there. The traffic all goes in one direction.

Ten parents have recently sued the state of Pennsylvania for excluding their retarded children from educational services, thus violating their right to equal educational opportunity, and have received a favorable judgment. The concept of *zero reject*, that no child shall be denied educational services appropriate to his level of development and need, seems to be on the verge of acceptance in our society. But such a victory will be a hollow one if what happens is merely a more sophisticated version of exclusion, this time to a special educational program that cannot deliver effective services and cannot negotiate that child back into the regular program when appropriate [Gallagher 1972, p. 529].

A note of reality. To someone unfamiliar with schools, Public Act 94-142 will appear as a step to initiate mainstreaming. The fact is that most handicapped pupils have always been mainstreamed in the public schools. In whatever ways schools may have defined a handicapped child there were never enough special classes in the schools to accommodate all the children so defined. Special classes for the mentally retarded go back a long way in our society but never has there been other than a very small fraction of these children in these classes. This was not because school personnel wanted few special classes but rather an unwillingness to bear the costs. In recent decades, due to state or federal subsidies special classes have been developed for other types of handicap such as perceptually impaired, learning disabled, and emotionally disturbed, but the number of children in these classes has always been a very small percent of those considered to have a handicap.

Why, then, this new push for mainstreaming? Several factors have been at work. First, it is obvious that if a handicapped child is placed in a special class it is not because of the diagnosis. If it were, how did the schools decide to place one handicapped child in the special class and not many others with the same diagnosis? The most frequent answer has been that the children placed in the special class were disturbing in the regular class. And not infrequently that said as much about teachers as it did about handicapped children. In short, special classes were a kind of dumping ground for "behavior problem" children, and the dumping was not always deserved. Second, the dramatic increase in special classes of all sorts in the past two decades was a direct consequence of state and federal subsidies that made it "profitable" for school systems to set up these classes. As one teacher said: "Now we have a lot of places to dump children." Third, particularly in our urban areas, special classes tended to have a disproportionate number of children from ethnic or racial minorities, a tendency that did not go unnoticed by more militant members of these minority groups. Fourth, if the trend for increased numbers of special classes continued, both the state and federal budgets would have to expand considerably. In a sense the process

came full circle: Local school districts would not increase the number of special classes unless a good part of the costs came from the state or federal governments, and now these governments were concerned about the increasing costs. Not surprisingly, economics has been a potent factor. Economics, dumping, overrepresentation of minority groups—these together with a heightened sensitivity to civil rights account for the recent push for more mainstreaming. As for economics, let us listen to part of an editorial by Ryor (1976) as president of the National Education Association:

> For effective mainstreaming, regular classroom teachers must have the strong and coordinated backing of special education teachers and support personnel. Yet in these economically perilous times, the threat that boards will fire special education teachers as they put handicapped into regular classrooms hangs like a pall. What an ironic twist it will be if, in implementing this potentially valuable movement for the handicapped, we dispose of the teachers now best prepared to help them!
>
> If mainstreaming is to receive NEA support, it must emphasize thorough preparation of regular and special teachers for their roles. Mainstreaming is one of the most complex educational innovations ever undertaken, and for boards and administrators to plunge their schools into it without advance preparation carries great potential harm for regular and special students and for teachers as well. Without question, this basically good program, riding a wave of enthusiasm, has sometimes been pushed far too fast. Few states yet have carefully organized programs for making mainstreaming work. . . .
>
> Finally, it is pie-in-the-sky fantasy to envision effective mainstreaming without increased funds for additional teachers, auxiliary services, special supplies, and other necessities. Locally, mainstreaming reportedly threatens to bankrupt some districts that are already teetering on the brink of insolvency. Perhaps from a broader view, the answer is the same as for much other school financing: America must get its priorities lined up right. NEA's goal of one-third federal funding for education speaks eloquently to that point [Ryor 1976, p. 1].

The reader should not assume that opposition to mainstreaming only exists within the schools. In some communities opposition to mainstreaming has come from parents of handicapped children, either because they are satisfied with what their children are getting in segregated classes, or because they have little confidence that the regular classroom teacher will be able to integrate handicapped children. The parallels between the reactions of different groups in the 1954 desegregation decision (and the consequent busing) and to Public Law 94-142 are striking and should serve as a base for fashioning a realistic time perspective in regard to accomplishing goals of legislation (or court decisions) that require people to modify their attitudes, behavior, and practices. This, in fact, was a major consideration in the decision to acquaint the reader with some of the issues in the history of our educational system, a history that tells us again and again, that societal values, institutional practices, and blatant prejudice change slowly, and that these changes are always stormy. Someone once said that the ruling "law" of the fate of a public policy (its formulation, acceptance, and implementation) is "whose ox

is being gored?" In regard to 94-142, as in the case of the 1954 desegregation decision, the oxen of many groups will be gored. For a concrete example of the real problems 94-142 brings in its wake, the reader should consult an article by Greenberg and Doolittle in The New York Times Magazine (December 11, 1977). The main heading is: "Can schools speak the language of the deaf?"; the subheading is : "A new federal law requires public schools to educate deaf children, but in states where 'mainstreaming' has been tried, it's created many problems."

One other factor deserves mention and it is no less potent for its lack of clear and direct explication. The polarization between school and community has become deeper and stormier. The fact is that school personnel have more and more become the objects of community hostility, derogation, and rejection. Never before have school programs and practices been so scrutinized and criticized. It is only somewhat of an exaggeration to say that school personnel are perceived as guilty until proven innocent. If that is an exaggeration of how the community views the school, it is nevertheless how school personnel feel.

It should occasion no surprise, therefore, that in the course of criticizing schools (e.g., types of tests used, confidentiality of files, criteria for suspension and explusion, racial discrimination, accountability) the questions of how handicapped children are diagnosed, managed, and educated would at some point come to center stage in a drama of deep and opposing currents of feeling. Mainstreaming in the past, as well today, cannot be seen as an educational issue or problem. It has always reflected the nature of the larger society, if only because deviancy or handicap are consequences of societal norms.

Our analysis has indicated that opposition to mainstreaming has characterized the history and structure of our educational institutions. One may, therefore, ask what has been the reception accorded Public Law 94-142? Before trying to answer that question, however, let us look at possible implications of the very title of the law: Education for *All* Handicapped Act.

All Handicapped Children

Public Law 94-142 is not only for those diagnosed as mentally retarded. To anyone familiar with the recent history of advocate groups for the mentally retarded, what is remarkable is not the law itself but the lack of strong opposition by these advocate groups to the law. Ever since the early fifties, when the advocate groups became formidable, their efforts have been directed to spotlighting the need of retarded people for more equitable and humane public support. Put in another way, they were opposed to administrative setups that had responsibility for all handicapped people, which in practice meant that the mentally retarded would be, so to speak, low man on the totem pole.

For example, it was long the practice that the state department of mental health had responsibility for state programs, residential or otherwise, for mentally retarded people. This meant that they had responsibility for the mentally ill and the mentally retarded. It also meant that the latter got far less attention and support than the former, if for no other reason that the heads of these state agencies were psychiatrists who by virtue of their training had far greater interest in mental illness than in mental retardation. In *Exodus from Pandemonium* (1970), Blatt describes and discusses the "politics" of a state department of mental hygiene, and there is every reason to believe that his story is not atypical. A special act of the legislature was required for Blatt himself to be appointed in the Massachusetts Department of Mental Hygiene as Deputy Director for Mental Retardation because he was not a physician. It is small wonder that advocate groups began to fight for the administrative independence of programs for mentally retarded people. Two examples:

1. Up until the late fifties, Connecticut had no central state department of mental health. Each institution for mentally ill or mentally retarded people had a board of trustees appointed by and responsible to the governor. Pressure for a centralized agency began to mount for three reasons: growing public awareness of the extent of the mental health problem, the inadequacies of existing mental hospitals, and the combination of rising costs and the desire for efficiency. Plans were developed for the proposed state agency to have responsibility both for the mentally ill and the mentally retarded. A variety of advocate groups, aware as they were from other states of the consequences of this administrative arrangement, mounted a campaign for mental retardation to be placed in the department of health rather than in the new department of mental health. It is not accidental that between 1935 and 1960, Connecticut pioneered in new programs for mentally retarded people (Sarason, Grossman, and Zitnay 1972). During this period Connecticut may well have been the only state in which mental retardation was "independent." Within the past decade, the administrative separation of mental retardation from mental health has become more frequent.

2. In 1966, a subcommittee of the House of Representatives conducted a hearing on a proposed bill which contained funding provisions for special education which then meant mental retardation. The bureau head (Dr. Donald N. Bigelow) from the Office of Education who was testifying in favor of the bill made an eloquent plea the thrust of which was to bring special education, especially in regard to the training of teachers, into the mainstream of American education. This plea did not sit well with the subcommittee chairman who had fought for greater and separate recognition of

the field of mental retardation. He interpreted, wrongly in this instance, the bureau chief's plea as a kind of power grab that would have the familiar effect of robbing the field of its need for increased support. The hearing was on a Friday. By the end of the next Monday, mental retardation programs had been separated from the bureau.

On the surface the All Handicapped Children Act appears unobjectionable. Indeed, it appears a tremendous stride forward. But from the standpoint of partisans for mentally retarded children, especially those with a sense of history and knowledge of the culture of schools, there are grounds for unease. This stems from the fact that in the past fifteen years there has been an exponential growth in special classes for the emotionally disturbed, the learning disabled, the perceptually handicapped, and the hyperactive child. The push for those classes came from within and without the schools and among the leaders from without were those from the mental health professions who heretofore had never exercised such leadership on behalf of the mentally retarded. This is not said in criticism but simply as a matter of fact.

The array of special classes was for the most part for pupils not regarded as retarded but whose handicaps were either in some way disruptive of the normal class routine or put undue burdens on teachers who felt inadequate to deal with these children. These special classes and programs were also costly because they required a variety of educational and mental health specialists than was ever deemed necessary for special classes for the mentally retarded. The unease in all this stems from the fact that powering the passage of Public Law 94-142 was far less a concern for mentally retarded children than for the bewildering assortment of children the schools considered "handicapped" and in need of segregated programs. We put quotes around handicapped because the bases for such a label are ambiguous, prejudicial, and even invalid in many instances.

For example, few topics can engender more heated controversy than trying to get agreement on the criteria of emotional disturbance or the nature of learning disabilities. The unease can be now put in the form of a concrete question: is it not likely that in implementing the mainstreaming intent of Public Law 94-142, less attention and effort will be given to mentally retarded children than to the others encompassed by the act? This question has to be raised not to alert anyone to a conspiracy against mentally retarded children but to suggest that public laws are reactions to current perceptions of social problems. In the case of Public Law 94-142, the problems in our schools that seemed to need correction did not primarily center around mental retardation. This, of course, does not mean that the law was not concerned in an important way with mentally retarded children but rather that *in the process of implementing the law schools would tend to give greater attention to other kinds of children*. Traditions, structure, and perceived priorities will determine the law's effects. Individuals and institutions are

rather adept at transforming a law's intent to their purposes. If that were not the case, legislative bodies would spend far less time than they do amending laws and writing remedial legislation.

Let us give attention to an article by Milofsky in the magazine section of the *New York Times* for Sunday, January 2, 1977. The heading of the article is as follows:

Schooling for Kids No One Wants

> A new Federal law requires "mainstreaming" of handicapped children into regular classes. It could prove as controversial as busing.

The heading reflects the feelings of many people. Milofsky's article is based on observations of mainstreaming in Massachusetts consequent to the passage of a 1972 state law containing "Chapter 766" on which federal law 94-142 was later based. Mainstreaming has been in effect for five years in Massachusetts.

> It requires local school districts to take responsibility for the education of all children who suffer from handicaps "arising from intellectual, sensory, emotional or physical factors, cerebral dysfunctions, perceptual factors, or other specific learning disabilities or any combination thereof." Chapter 766 discourages the labeling of handicapped children as much because of the "stigmatizing effect" this can have and instead emphasizes the individual needs of each child, determined through a "core evaluation" by a team consisting of a psychologist or social worker, doctor, or nurse, the child's present or most recent teacher, and a parent. The law mandates the involvement of parents and lay groups in "overseeing, evaluating, and operating special education programs" through regional and state advisory committees, a majority of whose members are parents of handicapped children.
>
> The Massachusetts law has enabled the mainstreaming of the "vast majority" of handicapped children into public schools, says Dr. Robert Audette, Associate Commissioner for Special Education in Massachusetts. Most of these children divide their time between regular and special classrooms, with only the most severely afflicted children in segregated classes.

Before giving some of Milofsky's observations, it should be noted that he gives examples of mainstreamed pupils: cerebral palsied, learning disabled, emotionally disturbed, and perceptually handicapped children. Mental retardation is never mentioned in the entire article. This may be an oversight but that is our point: The mentally retarded may well be overlooked. One could argue that it is a real step forward that our society is recognizing that there are many handicapped children with different types of conditions, and

that no more attention should be given to one group such as the mentally retarded than to others. We agree.

However, as we pointed out in earlier chapters, ours is a society that places such a high value on "intelligence" that those who are considered to have less of it are devalued more than those who don't but have other characteristics interfering with school learning. As soon as a child is diagnosed as mentally retarded, the social-educational-productive worth of that child tends to be seen as less than if the label given the child was "emotionally disturbed" or "learning disabled"; the latter labels implying a more hopeful prognosis.

Every teacher has been told: "You teach children, not subject matter." If that admonition is so often honored in the breach, it is for the same reason that we so often react not to children but to labeled children, and the label does not have to be based on a formal diagnosis. So, if we seem to be partisans for mentally retarded pupils, it is not because we feel they are owed more than other children, which is as silly as saying that we should devote more attention to "gifted" than to "run-of-the-mill," but rather because in our society they are likely to get less than other children.

Let us turn to what Milofsky (1977) reports:

1. Mainstreaming means being in the mainstream part of the time: "Most of these children divide their time between regular and special classrooms, with only the most severely afflicted children in segregated classes." What that statement means is that some children are more segregated than others.
2. Many teachers feel unprepared for the responsibilities the Massachusetts law gives to them, and those school personnel who might be of help to teachers are too busy meeting their new responsibilities under the law. Some teachers, in the minority, report being able to cope with their new responsibilities.
3. Emotionally disturbed children are most disturbing, and school personnel feel that they are being required to deal with these children with very inadequate resources and no expectation that these resources will ever be available to them. In the City of Springfield "Most of these children are boys and many of them are black or Spanish-speaking [and] there is little hope of returning them to regular classes."
4. It is difficult for parents to assert their rights, in part because they do not know the law and in part because "they are intimidated by the whole thing."
5. For some towns and cities the law, despite its funding provisions, has created financial hardships.

Consequences of Public Law 94–142

Passed in 1975, Public Law 94-142, building on a law passed in 1974, required that each state "has in effect a policy that assures all handicapped children the right to a free appropriate public education by October 1977 when funding was to begin. Even if one were writing many years after October 1977, it would be difficult to judge the law's consequences for reasons we will take up later. What is possible at this point is to present observations of how some school districts have reacted and prepared for the deadline. We do not claim that our observations are based on any kind of representative sampling. We have observed and talked to numerous school teachers, administrators, and policy makers—sufficient to give us some sense of the diversity of reaction and program.

The consequences of Public Law 94-142 will vary in terms of urban, suburban, and rural settings. Put in another way, the consequences will vary not only in terms of the size of the school district but also in terms of factors highly correlated with size: racial and ethnic composition, average achievement levels, serious problems of management and discipline, class size, frequency of families moving within a school district, teacher morale, and level of conflict between school personnel and the community. Only if we were living in another world, could one avoid predicting that the consequences in our urban settings will very likely be different from those in suburban and rural settings.

Someone once said that our urban school systems are really two systems, regular and special, and that the regular exceeds the special in size by a surprisingly small amount. In 1968, the President's Committee on Mental Retardation found that children from poverty and ghetto areas are fifteen times more likely to be diagnosed as mentally retarded than children from higher income families, and that nationally most of the retarded are found in our slums.

From the standpoint of urban school personnel, these and other types of special classes contain only a fraction of pupils who would be in them if more funds were available. As more than one urban school teacher has said: "I am a *regular* classroom teacher but don't kid yourself, I have a *special* class." This feeling on the part of urban school personnel increases in frequency and depth as one moves from elementary to middle to senior school levels.

These feelings have deepened in the past few years as cutbacks in funds have made for larger classes. But even before these cutbacks, teacher unions in our urban settings sought, often successfully, to insure that regular classroom teachers would not have to cope with children who in one way or another disrupted classroom routine and academic goals. From the standpoint of urban school personnel, the provision in Public Law 94-142 restricting funding to a small percent of pupils diagnosed as handicapped is a gross misperception of the size of the problem. Furthermore, from the standpoint of urban school personnel, the provisions of the law safeguarding the rights of children and parents will not only be costly in time but may well heighten the level of existing conflict between school and community. The fact that the law provides in-service training for school personnel to enable them to

cope with the consequences of increased mainstreaming is explicit recognition that what is at issue is changing the attitudes of school personnel.

Our observations and discussions lead to the unfortunate conclusion that urban school systems are hardly prepared to implement Public Law 94-142. There are some school systems that had no plan at all several months before the deadline of October 1977. As one administrator in a large urban school system, who shall go unidentified, said:

> It's not that we don't want to be prepared but simply that we have not had the time, and frankly the energy, to think through what we should do and how we should do it. And to be completely truthful, I have not read the law and no one I know has either. We thank God when we get through a day or a week with our hearts and bodies intact, so when you ask what we are doing about the law, I get a sinking sensation. But then again that's exactly the way we feel, sinking.

We have quoted this nameless person's reactions not for the purpose of criticizing, or evaluating, or excusing, but to underline the stance of beleagurement that urban educators project.

Several urban school systems reported that they had already instituted mainstreaming. Although the reports differed in a number of respects, they tended to have several features in common. First, the creation of centers to which handicapped children were sent for academic subjects and in which they spend a significant portion of the day. Second, these pupils were "mainstreamed" with the other children in the gymnasium, lunch, music, etc. In some instances, children were bused daily to the center and the mainstreaming took place there; in other instances the center was in the school which the child would normally attend by virtue of place of residence. In one instance the center was in a mobile unit parked next to the school. Third, in almost every instance the descriptions provided us indicated that primary attention was being given to those labeled as emotionally disturbed or learning disabled. In other words, they seemed to be defining mainstreaming, far less in regard to mentally retarded pupils and far more to those with labels less suggestive of an intellectual deficit.

Mainstreaming: Begging the Question

Mainstreaming is a concept powered by a value: Every effort should be made to allow a handicapped child to be an integral member of his peer age group and only when this is not possible should one employ the least restrictive alternative. The question arises, however, by what criteria should one resort to a least restrictive alternative? The answer to this question, of course, will in practice determine what mainstreaming is. It is relatively easy to get agreement on a verbally stated value, it is far more difficult to keep the agreement once that value is acted upon. Between intent and performance is

a wide area mined by obstacles that often destroy the intent. Because you want to do "good" does not mean you will, or that if you do good that others will agree that your actions have been consistent with your values.

In practice, on what basis is the least restrictive alternative being decided and how consistent is it with the underlying value? The very fact that Public Law 94-142 was enacted, that it calls for in-service training, is testimony to the widespread belief that too frequently schools defined least restrictive alternative in ways congenial to their accustomed perception of their mission rather than what was in the best interests of certain children. This is not peculiar to schools but is characteristic of the way most organizations deal with troublesome individuals. Public Law 94-142 does not tell school systems how to decide the question; it puts the burden of proof on schools to justify resort to a least restrictive alternative. How do some schools seem to be justifying resort to the alternative? Keeping in mind that mainstreaming is in its infancy, and that our observations and discussions cannot be assumed to be representative, although they may turn out to be, the answer to the question is: relatively sincere tokenism. And by that confusing and self-contradictory answer we mean that there is sincere desire to comply with the law at the same time that a tremendous amount of time and energy go into the development and maintenance of the new type of segregated setting.

The very existence of these settings requires justification and use, and this often plays into the tendency to avoid asking to what extent the child is removed from the regular classroom because of the inadequacies of the classroom. This is not to say that the child labeled as handicapped is no problem in the classroom but rather that classroom problems are always a consequence of the interaction among characteristics of the child, the teacher, and other children. Problem behavior always has a situational component. Problem behavior is not "inside" or characteristic of a child, but a feature of a complex situation. For example, the most dramatic and sustained change in behavior we have ever seen has been when we could change a child's classroom, no mean diplomatic feat (Sarason, Levine, Goldenberg, Cherlin, and Bennett 1966). Consider the following case description:

> Tommy was a seven-year-old boy enrolled in the second grade. He was a well developed, goodlooking child of above-average intelligence who had entered the elementary school one year before when his family had moved into the area. Both academically and socially his performance and adjustment at the time were more than adequate and consistent with his abilities and talents. Although initially noted to be somewhat shy, he quickly made friends and was highly regarded by his first grade teacher.
>
> Tommy had had several of the usual childhood diseases (chicken pox and measles) and his last complete physical examination had been essentially negative. His teeth required attention, his vision was 20-20 and his hearing was normal. Thus, until the summer of 1964, Tommy was a relatively healthy, attractive and bright seven-year-old whose developmental and medical history was essentially

unremarkable. Although he experienced some minor difficulty when he entered the new school situation, his adjustment, both academically and socially, was completely satisfactory.

During the summer vacation Tommy, delivering newspapers, was viciously attacked and bitten by a dog. As he went up to one of the houses on his paper route, the dog leaped on him, ripped his clothing, and bit him on the back and wrist. Tommy's screams eventually brought the dog's owner, who had to beat the dog repeatedly with a club in order to make him let go of the child.

Tommy was taken immediately to the office of a local doctor. His mother was notified and met Tommy there. His wounds were cauterized and injections administered for possible infection, and he was given sedatives. Soon after this experience Tommy became very quiet and extremely withdrawn, not talking or playing with other children, and refusing to leave his home. About three weeks later, he developed a cold and what was described as an "asthma attack" in which he was short of breath and had difficulty breathing. According to Tommy's mother it was during this time immediately following the incident with the dog that Tommy "woke up nights screaming and crying and at times running out of the house. He complained of a pounding in his head and imagined seeing things."

With the passage of time and the approach of the new school year Tommy's posttraumatic symptomatology appeared to become more involved and frightening. He began actively hallucinating and talking about "the ugly little man who's coming and putting bad feelings in my head." He became extremely frightened by loud sounds and constantly sought his mother's attention, reassurance, and protection. The only way in which she could calm him down would be to hold him and speak to him in a soft quiet manner. After numerous consultations with the family doctor, it was decided to put Tommy under the care of Dr. S., a "nerve specialist in town." Dr. S. placed Tommy on a regimen of medication (phenobarbital) to be taken three times a day after meals. It was his feeling that Tommy's condition was "an emotional reaction related to the strain stemming from his traumatic episode with a brutal dog." Tommy was told that the "pill he took to school would help him get rid of the spells."

It will be recalled that when Tommy initially entered the first grade he had experienced some minor difficulties in adjusting to his new living and school settings. It was during this period that he first came into contact with the school nurse. According to her he "often would come to me during the first few weeks of school complaining of a cold or stomach upset, but would be satisfied to just talk with me, have his temperature taken and return to class." Following his successful adjustment in school he contented himself with visiting the nurse whenever the holidays were drawing near, at which time he would wish her a happy holiday, and would often give her a card that he had made for her.

On returning to school this year Tommy was assigned to a second-grade class. At this time he was extremely nervous and upset, often running away from the loud noises in the schoolyard, and frequently hallucinating. His single anchor of security in school appeared to be the faith he placed in "the pill that would help my spells."

Tommy's second-grade teacher was an essentially unresponsive and reserved person. Her approach to teaching and to the children was all business. Her

previous teaching experience had been confined to the parochial school setting and it was difficult for her to tolerate any interference with the academic standard and expectations she set for her students. Our observations in her classroom always revealed an academically competent teacher who was a stern and controlling disciplinarian and who utilized methods of shaming and rejecting to ensure the maintainance of an orderly efficient classroom. Although never harsh or uncontrolled in her interpersonal dealings with the children, neither would she allow herself or them to minimize their personal distance in a physical or psychological manner. In short, however competent her preparation and however well-intentioned her philosophy of teaching, she was a teacher who was essentially unable or unwilling to deal with the particular and idiosyncractic needs of her children. She tended to perceive these needs as unwelcomed and unrelated interruptions in the processes and aims of second-grade education.

In terms of the teacher's relationship with Tommy, although upset and somewhat frightened by his behavior, she perceived his spells as essentially interfering; that is to say, as discrete behaviors that erected unwanted barriers for her in her attempts to present specific material to the rest of the class. As far as his pills were concerned, she viewed the responsibility for his taking them as a matter of concern for Tommy, his parents, and his doctor. It was not within the scope of her definition of her professional responsibilities to become involved in a problem that was distracting in nature and took time away from her teaching duties. This being the case, and because she was unable to materially reorganize her perception of the situation, she was content to allow Tommy to utilize the nurse and her office as the appropriate setting for such interactions. This removed Tommy from her classroom during his periods of stress, and at the same time enabled her to maintain her firm position regarding the limited and relevant areas of responsibility for a teacher.

From this point on Tommy began spending more and more of his time at the nurse's office, and it was here that we first met him. According to the nurse, whenever Tommy was in school – his absence rate for the months of September and October were extremely high – he would come to her office to take his pill or "whenever he felt a spell coming on." They would spend these periods of time talking and Tommy would describe vividly his feelings and tell her about the "things he saw." Often when his crying and trembling subsided she would call his mother, talk with her at length, and eventually have Tommy taken home. Although the nurse knew about the incident with the dog, Tommy himself soon brought it up during one of his particularly difficult days. They spoke about it at some length and the nurse, in the context of sharing and understanding his fear, related to him several other such incidents involving other children. It was during the next day that we met Tommy. On that occasion Tommy had come to the nurse's office and wanted to go home. He was sobbing uncontrollably and seemed extremely nervous when we came into her office. After he calmed down a bit we all sat around while Tommy told us about "the little man I saw in my class who was coming to put bad things in my head." Once more he spent a good deal of time talking about the past summer, but finally began speaking of the terrible difficulty he had whenever he felt a spell coming on and would have to ask his teacher about letting him go out of the class to take his pill. He ended by informing us of his desire not to come to

school anymore. After speaking with Tommy's mother and the teacher we decided eventually to change his class, and, for the interim, we put him on half days, both to minimize his anxiety-arousing contact with his teacher and to enable us to have the time to search for an appropriate second-grade teacher. During the time that he was attending school only in the afternoons he spent most of his time doing his schoolwork in the nurse's office after his teacher had given him his assignment. We were, as yet, relatively new in the school. Although we felt the need to have Tommy's class changed, we wanted time to get a better idea of exactly which teacher would be most appropriate for him. Since neither Tommy's current teacher nor the school nurse minded him using the nurse's office as his interim "classroom," everyone agreed to this arrangement. This enabled the nurse and ourselves to utilize that period of time to search for, become acquainted with, and brief whoever was to become Tommy's new teacher.

The following week we were in the lunchroom during a time of the day when the school nurse usually is not in her office. Tommy entered the lunchroom looking obviously upset and a bit bewildered. He was grasping his bottle of pills tightly in his hand as he looked around for his teacher. Before we could reach him or he could see us he turned to another teacher and hesitatingly began asking her permission to take his pill. The teacher, noting his degree of upset and the air of panic pervading his speech, immediately took his hand and accompanied him out of the lunchroom. They proceeded down the hall to a fountain where she helped Tommy take the pill. Once this was accomplished the teacher took Tommy to her room where he calmed down in a relatively short period of time. With her arm draped gently around his shoulders she then took him back to the lunchroom where he sat at her class's table for the remainder of the period. In this very short time we knew that we had found Tommy's next second-grade teacher.

This teacher was a young and attractive woman who was relatively inexperienced in terms of the number of years she had been teaching. Her class was generally a bit more noisy than others but always jumping with activity. She was an extremely warm and accepting person who seemed most effective and efficient when she became intimately involved with and in the ongoing activities of her children. Although she never lost control of her class there was a prevading atmosphere of disjointedness in the sense that many activities might be going on at the same time. This looseness quickly subsided whenever she raised her voice a bit above the well-modulated tone in which she usually addressed individual students. Her lessons were not always totally prepared and sometimes were lost in organizing particular events. She was extremely patient with the children and utilized well both verbal and nonverbal cues to communicate her feelings to them. More than anything else she seemed to enjoy teaching and being with her children, and this enjoyment appeared to be reciprocal.

We immediately met with the nurse and the "new" teacher to consider the transfer of Tommy to her class. We discussed Tommy's difficulties and the reasons we felt she might be helpful. The teacher, in turn, communicated her desire to have him placed in her class and informed us that, indeed, she had a great affection for him and hoped she would be able to help him. It was decided that the school nurse would be the most appropriate person to handle the transition in the sense that she would both help present the idea to Tommy and would remain the

available resource whenever he felt the need to leave the classroom for any reason relating to his difficulties. It was also decided that the teacher would meet with us on a weekly basis to discuss Tommy's progress or lack of progress.

Tommy was transferred to his new class and immediately placed on a full-day schedule. During the first day the teacher spoke with Tommy about his difficulties and communicated to him how important it was to her that he get better and take his "spell pills." They established a procedure whereby he would not have to make any public statements in class prior to the granting of permission to leave the room to take his pill. Whenever Tommy was absent the teacher immediately called his home and spoke with him and his mother. Although Tommy was informed of the availability of the school nurse the teacher made it clear to him that his health, as well as his school work, was now also a joint venture between him and herself. To Tommy this meant that she very much wanted him to be able to talk with her about his feelings and his symptoms, and that her interest in him was as a "little boy" and not just as a "little student."

Tommy's progress after entering his new class was speedy and marked and was manifested in virtually all of the areas in which he had been experiencing profound difficulties. For purposes of clarity we describe these areas separately, although the reader should note that his behavior in each of these areas was influenced by, and interrelated with, his experiences in the others. Tommy's absence rate from school decreased almost immediately after he was placed in his new class. In terms of academic performance, Tommy rose to be one of the top five students in his class. According to his grades as well as his teacher's observations, he was beginning to fulfill the above-average potential noted in the first grade. Although before his shift he was unable to concentrate, had difficulty maintaining attention, and was unwilling to work at anything but his reading material, he was now actively involved in the varied projects occurring in his classroom. In general his over-all academic performance, as well as his social adjustment, was at a higher level, occurred in a context relatively free of the debilitating effects of undue loss of attention or the inability to concentrate, and appeared to have become more inner-directed and self-satisfying than externally imposed.

Of greatest import were the changes that occurred in Tommy's symptomatology and schedule of medication. The week before his transfer was particularly difficult for him. His symptoms (fearfulness, phobic reactions to loud noises, periods of fitful crying, and apparent hallucinatory experiences) were quite pronounced, and the occasions necessitating his approaching his teacher to request attention for his "spell pills" seemed to exacerbate these symptoms. At that time he was on phenobarbital. During the time after his transfer to his new class he showed evidence of a steady and progressive reduction in the intensity and duration of his psychotic symptomology. Soon after entering his new class the periods of fitful crying accompanying his pill-taking behavior subsided. He was gradually able to tolerate loud noises, although this aspect of his difficulty has been only recently eliminated. His hallucinatory experiences became less frequent and frightening, the more he spoke about them with his teacher. They, too, have not been reported for some time. In mid-December, approximately one month after his transfer, his medication was decreased to every other day and by late January was further reduced. At present all medications have been discontinued. In a recent meeting of the school nurse, the teacher, and ourselves the teacher in-

formed us that she had not noticed any changes since Tommy has been off medication. Tommy's mother reported similar progress at home and except for the fact that "he occasionally has nightmares and wakes up crying," felt that "the worst is over." Our latest classroom observations and information would support this point of view.

As far as Tommy's relationship with the nurse was concerned, this soon underwent a change. Although we made it clear to Tommy that the nurse was available to him whenever he felt he needed her, the frequency and duration of his visits to her, decreased steadily after mid-November. Although he had been in her office virtually every day that he was in school and had remained there for significant periods of time, subsequent to his shifting of classes he began showing up less often and would remain for shorter periods. This change was a gradual process and occurred over a long span of time. By late December the nurse observed that Tommy "still comes to see me about little things and many times just to say 'Hello'." Her most recent report indicated that, "Tommy has not visited my office in almost three weeks, except to look for a hat in the lost and found box!" [pp. 221-26].

This case was described long before mainstreaming was in the air and also before there were classrooms for emotionally disturbed children. Today, the chances would be high that Tommy would not be in a regular classroom but in a "least restrictive alternative." The presence of such alternatives, together with Tommy's behavior and blatant psychopathology, would probably effectively short-circuit thinking of alternative ways to maintain him in the regular classroom.

We are not asserting that all children can be maintained in the regular classroom; we are asserting three things. First, no teacher is equally effective with all kinds of children. It may sound like an extreme statement but we have never seen a child labeled as a serious classroom problem who could not be effectively managed by another teacher in that school if one disregarded grade levels. Just as we emphasized in Chapter 2 that some parent-child relationships founder because of a mismatch between child and parental vulnerabilities, the same principle holds between pupil and teacher. To resort to a least restrictive alternative without considering this principle is to subvert the intent of mainstreaming. The first question is not what is the least restrictive alternative, but how seriously has one attempted to match the child to a regular classroom teacher.

The second point, illustrated by Tommy's case, is the significance of the role of "consultant" in the school, whose task it is to support both teacher and child, but who essentially acts as an advocate for the child. The third point is that when least restrictive alternatives are not available, necessity can truly become the mother of invention. And while not all such inventions are successful, the rate of success has been quite encouraging. What we have observed about mainstreaming is that it has led to procedural and administrative inventions that are obviously different from the inventions described in Tommy's case.

There is another significance to Tommy's case and it has to do with the Yale Psycho-Educational Clinic, which was in existence between 1962-1972 (Sarason, et al. 1966; Kaplan and Sarason 1970). Clinic personnel worked in the schools and in the classrooms. To understand the role of the clinic member in the school, as well as to glimpse the significance of the rationale for mainstreaming, we give the introductory comments of a clinic member to the faculty of a school before any relationship between school and clinic was assumed.

For a number of years some of us in the Department of Psychology at Yale have been engaged in different research projects involving elementary schools. In addition to our experiences in the elementary schools, some of us have long been interested in various aspects of special education and in the preparation of teachers. As a consequence, we became increasingly interested in the day-to-day problems facing schools in general and teachers in particular. Let me say right off that there are two conclusions to which we have come. The first is that anyone who teaches in the public schools for less than $15,000 per year ought to have his head examined. The second conclusion is that a law ought to be passed making it mandatory for each parent to teach a class by himself for a day each year. Although these recommendations may not solve all problems, they would certainly help bring about changes that all of us would agree are necessary. All of this is by way of saying that our experiences have given us an understanding of what is involved in teaching and managing a large group of children, each of whom is a distinct character, for several hours each day over a period of 10 months. It is not flattery but rather strong conviction underlying the statement that the classroom teacher performs one of the most difficult tasks asked of any professional person. It would indeed be nice if all a teacher had to do was to teach. You know, and I know, that a teacher is a parent, a social worker, a psychologist, and a record-keeping clerk. Hopefully there is time to teach once the duties associated with these other roles are discharged. We are living at a time when everyone seems to be an expert on the schools and ignorance seems to be no barrier to articulating strong opinions. There is no doubt, as I am sure you will agree, that there is much one can criticize about schools, but there is also no doubt that unless one understands what a school is like and what it is faced with in its day-to-day operation the benefits we would like to see from these changes will not be so great as they should be.

One of the most staggering problems facing our society concerns the degree of serious maladjustment in many people. One has only to look at the size and number of our mental hospitals, psychiatric clinics, reformatories and the like to begin to grasp how enormous a problem this is. We are talking about millions of people and billions of dollars. What needs to be stressed is that in the foreseeable future we will have neither the personnel nor the facilities to give these troubled people the quality of treatment they need. In all honesty I must also say that for many of these people our knowledge and treatment procedures leave much to be desired.

As a result of our experiences, we at the Psycho-Educational Clinic in the Yale Department of psychology have come to two conclusions: first, far too little is being done either to try to prevent the occurrence of problems or to spot them at those points in the individual's life where with a little effort a lot may be ac-

complished. Second, if we believe what we say, we ought in a very limited kind of way to attempt to see what we can do. I do not have to emphasize to a group of elementary-school teachers the significance of a preventive approach to problems in the early grades. As I am sure all of you know as well as, if not better than I, you are faced daily with children whose behavior, learning difficulties, and interpersonal relations, (with you or other children) arouse in you concern, bewilderment, anger, and a lot of other reactions. On the basis of all the talks and meetings we have had over the years with teachers there would seem to be in any one classroom of 25 children anywhere from three to six children about whom the teacher is concerned in the sense that she has a question about their academic learning and personal adjustment in the school setting.

What do we propose to do? It is easier for me to tell you what we do *not* intend to do. For one thing, we do not intend to come into a school in order to see how many problem children we can refer out to various agencies. There is no doubt that you know a lot of children who could utilize the services of a child-guidance clinic or family service society. To come in with the intent of referring them out is both unfair and unrealistic because these agencies, particularly the child-guidance clinics are overwhelmed with cases and generally have long waiting lists. Even if the child-guidance clinic could take the child on, it would take them quite a while to get to first base with the child and in the meantime you still have that child in your class. Treatment procedures are neither that quick nor effective to allow you to expect that your difficulties with the child are over once you know he is being seen in a clinic. The question we have asked of ourselves is how can we be of help to the teacher in the here and now with whatever questions and problems she raises with us. In short, we want to see how we can be of help within the confines of the school.

It is not our purpose to come into a school to sit and talk to teachers, however helpful and interesting that might be. When we say we want to be helpful in the here and now within the confines of the school, we mean that in addition to talking with the teacher about the child we have to be able to observe that child in the context of the classroom in which the problem manifests itself. For help to be meaningful and practical it must be based on what actually goes on in the classroom setting. For example, it is in our experience no particular help to a teacher to be told that a child needs individual attention, a need which differentiates him not at all from the rest of us. What a teacher wants to know is when, how, and for what goals this "individual attention" will occur, and this requires a first-hand knowledge of what is going on.

We do not view ourselves in the schools as people to whom questions are directed and from whom answers will be forthcoming. Life and the helping process are not that simple. We have no easy answers, but we have a way of functioning that involves us in a relationship to the teacher and the classroom and that together we can come up with concrete ideas and plans that we feel will be helpful to a particular child. We are not the experts who can come up with solutions even though we have no first-hand knowledge of the context in which the problem has been identified.

I hope I have made clear that when we say we want to help it means that we want to talk to the teacher, observe in the classroom, talk again to the teacher, and together come up with a plan of action that with persistence, patience, and

consistency gives promise of bringing about change. It is not a quick process and it is certainly not an easy one.

I cannot state too strongly that we are not coming into the schools with the intent of criticizing or passing judgment on anyone. We are nobody's private FBI or counterintelligence service. We are not the agent of the principal or some other administrative hierarchy or power structure of the school system. We have no special strength or power except that which flows from our being able to establish a situation of mutual trust between teachers and ourselves. To the extent that we can demonstrate to you by our manner, gesture, and verbalization that we want to help, to that extent we make the development of this mutual trust more likely and quickly to occur.

There is one aspect of the way we function that I think needs some elaboration. I have already told you why it is essential for us, if our efforts are to be maximally useful, that we spend time in the classroom. Another reason this is essential resides in the one advantage we have over the teacher, i.e., we do not have the awesome responsibility of having to handle a large group of young characters five days a week for several hours each day, a responsibility that makes dispassionate observation and clear thinking extraordinarily difficult. We can enjoy the luxury of being in the classroom without the responsibility of the teacher for managing and thinking about 25 or more unique personalities. We do not envy you although I am quite sure that you will envy us for not having your responsibilities. It is precisely because we are "free" that we can observe what is going on in a way not usually possible for a teacher.

In order for us to help in a school it is crucial that we know that school as a physical entity and as a kind of social organization. Consequently, we usually make the request that for the first six weeks or so we visit classrooms and get to know you and what you do in different grades without any obligation to get involved with any problem. A school and a classroom are not simple settings and it takes several weeks until we get the feeling of familiarity. We will be here on certain days of the week so that you can count on when we will be here. We try to spend a day and a half a week in each school.

We do not know to what extent we can be of help to you. We do not present ourselves as experts who have answers. We have much to learn about this helping process. If our previous work with teachers is any guide, the type of service we want to develop is one that they feel they need. The only thing we can guarantee you is that we want to learn and to help. We have much to learn from you, and together we may be able to be of help to children in school [Sarason et al. 1966, pp. 59-62].

The thrust of the clinic's rationale was, obviously, to keep children in the regular classrooms. There were some special classes for the mentally retarded but none for any other type of handicap; children were not placed in special classes because they were retarded but because they were troublesome, and if state regulations did not set a limit to the size of these classes they would have been crowded in the extreme. Those were the days when pressure was mounting for more types of special classes and more community facilities to deal with children with school problems. The clinic's aim was to see if the pressure

to segregate and refer could be blunted. Those were also the days when suspensions and expulsions were frequent and not subject to the legal, civil rights procedures of today.

In early 1977, we interviewed Mr. Murray Rothman, long the Director for Special Education in the New Haven schools, to discuss what was being done about mainstreaming. What is relevant to the present discussion is that for several years before Public Law 94-142 was enacted, he had been able to place in each of nine schools a person whose major function was to be whatever help possible to classroom teachers in regard to their pupils. This he had done, he said, spontaneously as a result of his close working relationship with the Yale Psycho-Educational Clinic, and witnessing firsthand how the role of a clinic member in school helped teachers to maintain handicapped children in the regular classroom. He then reported that the nine schools which had a person who functioned in the cliniclike role referred significantly fewer children to "least restrictive alternatives." It was his opinion that if he were able to have such a person in each school, the need for these alternatives would not be eliminated but discernibly diluted in strength. This opinion finds clear support in an experimental study by Cantrell and Cantrell (1976), based on a rationale quite similar to that employed by the Yale Psycho-Education clinic and Mr. Rothman.

Finally, mention must be made here of a recent study by Lorion (1977) on individualized education for learning disabled children. The study is noteworthy in three respects that bear directly on mainstreaming. First, formulating a diagnostic-prescriptive program for each schoolchild took between three to four hours. Second, the prescriptive core took into account the child, the teacher, and the classroom, and was very specific and concrete. Third, the prescribers were available to teachers to answer any questions and, equally important, came into the classroom to observe and help.

At the end of the first year of the project, the educational gains of the students were remarkable and general. The significance of Lorion's study is in its demonstration of how integrated diagnosis, prescription, and follow-through must be if the individual needs of students and teachers are to be met. Public Law 94-142 mandates an individual educational prescription for each handicapped child, but to be done well this not only requires time but harmonious relationships among school personnel. "Harmoniousness" is only possible when each person makes a contribution at the same time that the person makes a contribution at the same time that the person feels his or her needs are being recognized and met. Such an ambience cannot be legislated and it is no secret that it is only rarely found in our schools. An individual educational prescription is not a collection of test scores and generalizations so vague and nondiscriminating as to remind one of the glittering generalities of a horoscope. It is, as in the case of Lorion's study, a formulation specific to the student and the teacher. It does not assume the teacher to be a mind reader but someone who needs to know what is expected and why.

The individual prescription is a plan of action not for a student by a teacher but for a student and diverse personnel in need of each other. As we pointed out in an earlier chapter, Binet knew this but those who came after him riveted their attention on his tests and missed what he called "mental orthopedics." For Binet, tests had no meaning if they could not be translated into specific actions in the classroom, and he knew this was no easy task. He never dreamed his test would become a task so routinized, so devoid of specificity for action, so assembly line in character, as to defeat everyone's purposes. Public Law 94-142 may well lock this routinization in concrete, not because that is its purpose but because it does not confront some of the major realities of the culture of schools.

In summary, mainstreaming, both in terms of its current conceptual status and possible consequences, has to be seen from a historical perspective that brings together long-standing educational practices and attitudes, reflecting the larger society and the forces for social change. Until recently, the conflict between forces for tradition and change had little impact on segregation practices within schools, so educational segregation of the mentally retarded went unchallenged.

However, as the conflict gathered strength, and began to be manifested in schools, segregation of other "handicapped" groups became much more frequent. The forces against educational segregation practices came primarily from outside the schools. Public Law 94-142 is the culmination of their efforts. However, these forces may have vastly overestimated the power of legislation to change the structure of schools in ways appropriate to the intent of mainstreaming or the attitudes of school personnel. This must be understood not in moral terms but in light of the weight of long traditions.

Preliminary observations suggest that many school systems are unprepared to deal with mainstreaming. Some are approaching it in ways that only minimally begin to meet the intent of mainstreaming: to avoid the negative effects of stigmatizing labels: and to foster tolerance and mutual understanding between handicapped and nonhandicapped youngsters. These preliminary observations also suggest that school personnel are perceiving mainstreaming largely in terms of nonretarded, handicapped pupils.

It appears that, in the future as in the past, those stigmatized with the label mentally retarded will benefit least from the intended benefits of mainstreaming. But as one school administrator in a large urban setting said: "Why not say that the mentally retarded will be harmed the least from the coming chaos!" Such a comment may well be unduly cynical but it does reflect the mixture of anxiety, impotence, puzzlement, and pressure which school personnel in our urban settings feel. To overlook such feelings is to do an injustice both to school personnel and to those who fought for mainstreaming. Between enactment of a law and practices consistent with it

is the whole, poorly understood problem of how to effect institutional change.

A Major Deficiency of Public Law 94–142

We have already said that the law can be construed as criticism of what our schools have been. Handicapped and nonhandicapped students are human beings, not different species, and their basic makeup in no way justifies educational practices that assume that the needs they have for social intercourse, personal growth and expression, and a sense of mastery, are so different that one must apply different theories of human behavior to the two groups. If we respond to the handicapped as if basically different, we rob them and us of the experience of similarity and communality. We can no longer allow schools to segregate children and educational personnel, based on conceptions that are invalid and morally flawed. That is the message that Public Law 94-142 implies.

But where did school personnel learn such conceptions? There are two answers, one general and one specific. The general answer is that they learned those conceptions, and justified them morally, by growing up in a society in which these conceptions and moral precepts were seen as valid, right, and proper. In short, they learned them in the same ways everybody else learned them.

The specific answer is that school personnel are graduates of our colleges and universities. It is there that they learn there are at least two types of human beings and if you choose to work with one of them you render yourself *legally* and conceptually incompetent to work with the others. As we pointed out earlier in this chapter, what we see in our public schools is a mirror image of what exists in colleges and universities. *One of the clearest implications of Public Law 94-142 is that the gulf between the special and regular education has to be bridged, and yet the law requires no change in our college and university training centers.*

We, therefore, have the situation in which the law mandates changes in our schools. School personnel must change in attitude, thinking, and practice, at the same time our training centers educate school personnel in the traditions of the "most restrictive alternative." As an educational administrator in Milofsky's article says:

> "It's fine to pass laws," he says, "but it's the teachers who are stuck trying to implement them. Nothing in the law requires in-service training on a systematic basis and a lot of the teachers have no experience in dealing with handicapped kids. We think 766 should require major changes at the undergraduate level. If there are going to be laws like this, they should be taken into account during a teacher's educational training."

At its root, mainstreaming is a moral issue. It raises age-old questions: How do we want to live with each other? On what basis should we give priority to one value over another? How far does the majority want to go in accommodating the needs of the minority? The emergence of mainstreaming as an issue raises but does not directly confront these questions. To the extent that we put discussion of mainstreaming in the content of education and schools, we are likely to find ourselves mired in controversies centering around law, procedures, administration, and funding. These are legitimate controversies because they deal with practical, day-to-day matters that affect the lives of everyone. But the level of difficulty we encounter in dealing with these matters will ultimately be determined by the charity with which the moral issue is formulated. At the very least it should make us more aware of two things: So-called practical matters or problems are always reflections of moral issues, and differences in moral stance have very practical consequences.